

2

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 38

THE HOOVEN & ALLISON CO., PETITIONER,

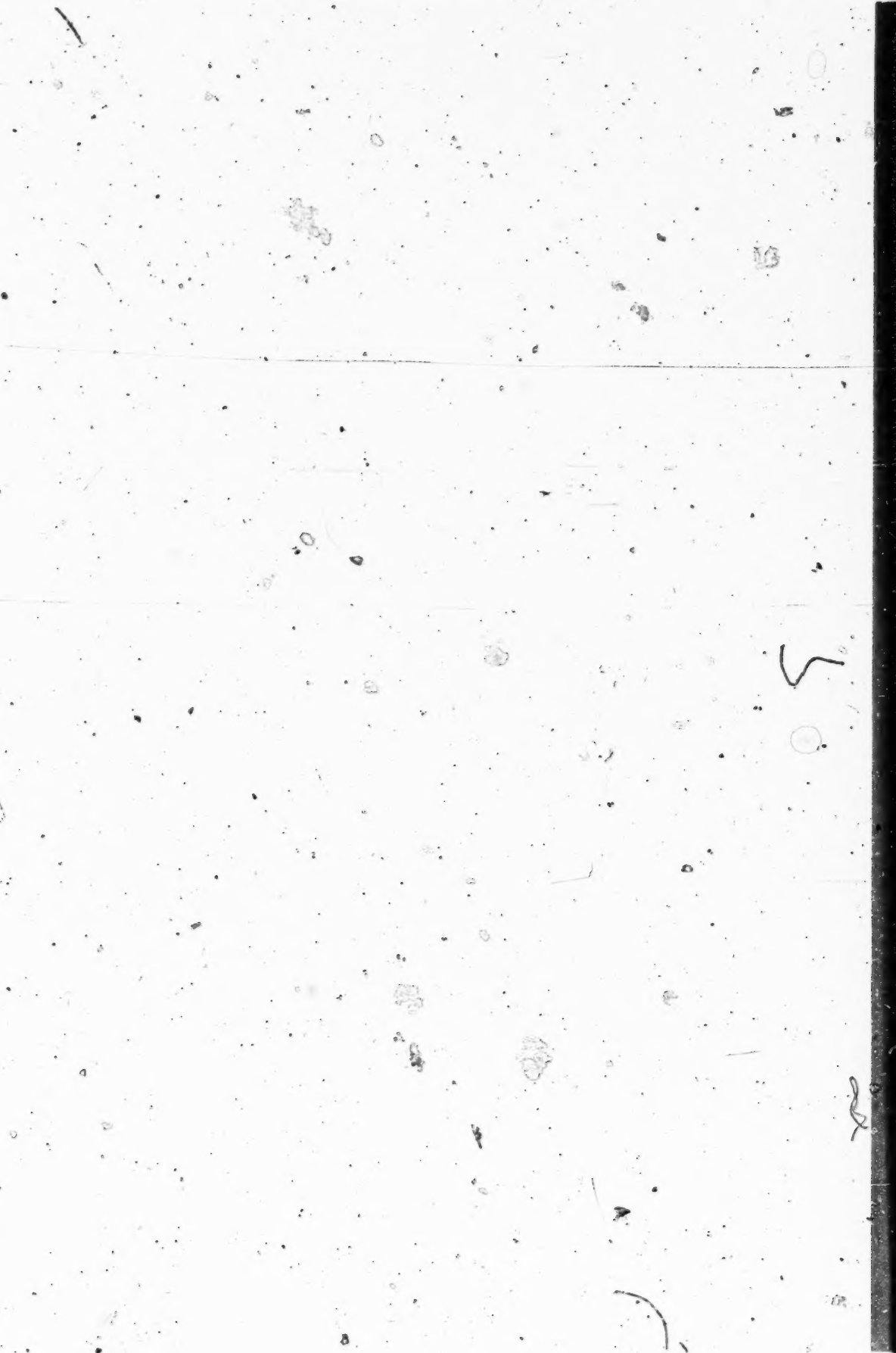
vs.

WILLIAM S. EVATT, TAX COMMISSIONER OF OHIO

PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE STATE
OF OHIO

PETITION FOR CERTIORARI FILED MARCH 14, 1945

CERTIORARI GRANTED APRIL 10, 1945



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

THE HOOVEN & ALLISON CO., PETITIONER,

vs.

WILLIAM S. EVATT, TAX COMMISSIONER OF OHIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF OHIO

INDEX.

	Original	Print
Proceedings before Board of Tax Appeals, Department of Taxation	2	1
Notice of appeal from assessments	2	1
Notice of final determination of Tax Commissioner	4	2
Assessment certificates of valuation and distribution	5	4
Acknowledgment of receipt of notice of appeal	8	5
Inter-County return of Hooven & Allison Co. for 1938	9	5
Inter-County return of Hooven & Allison Co. for 1939	18	13
Inter-County return of Hooven & Allison Co. for 1940	27	23
Proceedings and testimony	37	33
Caption and appearances	37	33
Opening statement for appellant	38	33
Testimony of E. D. Martin	46	38
Appellant's Exhibit No. 1—Stipulation re questions submitted to certain brokers and their replies thereof	84	63
Exhibit "A"—Reply of R. L. Pritchard & Co.	88	67
Exhibit "B"—Reply of MacLeod & Co.	95	71
Exhibit "C"—Reply of James Fyfe	102	81
Exhibit "D"—Reply of Stein, Hall & Co.	98	75
Exhibit "E"—Reply of Hanson & Orth	109	85
Appellant's Exhibit No. 2—Stipulation as to tangible personal property in appellant's inventory, etc.	114	89

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 18, 1944.

	Original	Print
Proceedings in Supreme Court of Ohio.....	115	90
Notice of appeal from order of Board of Tax Appeals.....	115	90
Assignments of error	118	92
Constitutional provision involved.....	121	94
Opinion of Board of Tax Appeals.....	122	94
Abstract of Docket of Board of Tax Appeals.....	131	101
Docket and journal entries of Supreme Court	132	102
Judgment	133	103
Order denying rehearing	134	103
Opinion, Turner, J.....	136	104
Dissenting opinion, Bell, J.....	145	112
Application for rehearing	167	119
Præcipe for transcript of record.....	161	121
Clerk's certificate	(omitted in printing)	163
Order allowing certiorari.....	164	122

[fols. 1-2]

**BEFORE BOARD OF TAX APPEALS, DEPARTMENT
OF TAXATION**

No. 4441

THE HOOVEN AND ALLISON COMPANY, Xenia, Ohio, Appellant,

v.

WILLIAM S. EVATT, Tax Commissioner, Columbus, Ohio,
Appellee

NOTICE OF APPEAL

The Hooven and Allison Company, above-named appellant, hereby gives notice of appeal from the assessment, reassessment, valuation, determination, finding, computation or order of William S. Evatt, Tax Commissioner, Department of Taxation, State of Ohio, above-named appellee, set forth in his assessment certificates of valuation and distribution dated July 3, 1941, and notice of final determination, dated July 31, 1941; and as the basis of its appeal alleges as follows:

(1) The appellant is a corporation organized and existing under the laws of the state of Ohio, with its principal place of business at Xenia, Ohio;

(2) The assessment certificates of valuation and distribution of the appellee, true copies of which are attached hereto and by reference hereby incorporated herein, were mailed to appellant on July 3, 1941;

(3) The notice of the final determination of the appellee, a true copy of which is attached hereto and by reference hereby incorporated herein, was sent to the appellant on July 31, 1941;

(4) The taxes in controversy are tangible personal property taxes for the calendar years 1938, 1939, and 1940;

[fol. 3], (5) The assessment, reassessment, valuation, determination, finding, computation or order set forth in said assessment certificates of valuation and distribution and notice of final determination, of which complaint is made

and from which appeal is hereby taken, is erroneous, invalid, and unlawful, for the following reason:

The appellee erred in including in the taxable inventory of of appellant for the taxable years 1938, 1939, and 1940, tangible personal property imported by appellant from foreign countries and held by it in the original package during said years, in violation of article I, Section 10, Clause 2, of the Constitution of the United States.

Wherefore, appellant appeals to the Board of Tax Appeals to rehear, review, redetermine, or correct said tax assessments, reassessments, valuations, determinations, findings, computations, or orders of the appellee as set forth in said assessment certificates of valuation and distribution, and notice of final determination, and to issue an order that appellant's returns, as filed, and its taxes, as paid, are complete and proper, and in full satisfaction of all of appellant's tax liability for the years herein involved.

The Hooven and Allison Company, by Thomas C. Lavery, Attorney.

Thomas C. Lavery, P. O. Box 5, Campus Station, Cincinnati, Ohio, Attorney for appellant.

[fol. 4] NOTICE OF FINAL DETERMINATION—Jul. 31, 1941

In the Matter of the Application of THE HOOVEN AND ALLISON COMPANY for Review and Redetermination

The application of The Hooven and Allison Company, Xenia, Ohio, for review and redetermination of amended assessment certificates issued July 3, 1941, came on for consideration.

It appears that certain items of tangible personal property were omitted from the returns of applicant for the years 1938, 1939 and 1940 upon the contention that such property is not subject to taxation by the State of Ohio on the grounds that it is tangible personal property imported by appellant from foreign countries and held by it in the original package during such years. Upon consideration of the applicant's course of business and all circumstances surrounding the acquisition of such property,

it is held that such property is not immune from taxation by the State of Ohio and the amended assessment certificates as issued July 3, 1941, are correct.

The application is therefore denied.

Department of Taxation, William S. Evatt, Tax
Commissioner.

I hereby certify the foregoing to be a true and correct copy of the action of the Department of Taxation this day taken by the Tax Commissioner with respect to the above matter.

William S. Evatt, Tax Commissioner:

(Here follow 3 photolithographs, side folios 5-7.)

INTER-CITY CORPORATION TANGIBLE PERSONAL PROPERTY
ASSESSMENT CERTIFICATE OF VALUATION AND DISTRIBUTION
 BY
DEPARTMENT OF TAXATION

H-68

Columbus, Ohio,

July 3, 1941

To the Auditor of Greene County, Ohio:

Sir: This is to certify that The Department of Taxation has fixed the value of tangible personal property
 of The Hooven & Allison Company Company

Address Xenia, Ohio

for taxation for the year 1938, and has apportioned to your county the sum of \$ 659,520
 distributed between the taxing districts therein as stated below. Upon receipt of this Certificate, you are re-
 quired to place these valuations on the general tax list and duplicate and taxes shall be levied and collected
 thereon in the same manner and at the same rate as real property in the taxing district.

TAXING DISTRICT

ASSESSED
VALUE NOT
INCLUDING
PENALTYPENALTY
ASSESSMENTSTOTAL
AMOUNT
ASSESSED

REMARKS

Xenia

659,520

Corrected per W.W.Karhart report - Imported goods added back
 Superseding assessment of Aug. 8, 1938 - Company waived rights under
 Sec. 5377 General Code of Ohio

**INTER-COUNTY CORPORATION TANGIBLE PERSONAL PROPERTY
ASSESSMENT CERTIFICATE OF VALUATION AND DISTRIBUTION
BY
DEPARTMENT OF TAXATION**

H-60

Columbus, Ohio,

July 3, 1941

To the Auditor of Greene County, Ohio:

Sir: This is to certify that The Department of Taxation has fixed the value of tangible personal property of The Mooven & Allison Co. Company

Address Xenia, Ohio

for taxation for the year 1939, and has apportioned to your county the sum of \$ \$604,190 distributed between the taxing districts therein as stated below. Upon receipt of this Certificate, you are required to place these valuations on the general tax list and duplicate and taxes shall be levied and collected thereon in the same manner and at the same rate as real property in the taxing district.

TAXING DISTRICT	ASSESSED VALUE NOT INCLUDING PENALTY	PENALTY ASSESSMENTS	TOTAL AMOUNT ASSESSED	REMARKS
Xenia City	\$604,190			

Corrected per W.W. Earhart report - imported goods added back

Superseding assessment of Aug. 14, 1939

INTER-COUNTY CORPORATION TANGIBLE PERSONAL PROPERTY
ASSESSMENT CERTIFICATE OF VALUATION AND DISTRIBUTION
 BY
 DEPARTMENT OF TAXATION

E-44

Columbus, Ohio, July 3, 1941

To the Auditor of Greene County, Ohio:

Sir: This is to certify that The Department of Taxation has fixed the value of tangible personal property
 of The **Hooven & Allison Company** Company

Address **Xenia, Ohio**

for taxation for the year 1940, and has apportioned to your county the sum of \$ **430,080**
 distributed between the taxing districts therein as stated below. Upon receipt of this Certificate, you are re-
 quired to place these valuations on the general tax list and duplicate and taxes shall be levied and collected
 thereon in the same manner and at the same rate as real property in the taxing district.

TAXING DISTRICT	ASSESSED VALUE NOT INCLUDING PENALTY	PENALTY ASSESSMENTS	TOTAL AMOUNT ASSESSED	REMARKS
Xenia City	430,080			

Corrected per W.W. Farhart report - imported goods added back

Superseding assessment of Aug. 12, 1940

[fol. 8]

BEFORE BOARD OF TAX APPEALS

DEPARTMENT OF TAXATION

No. 4441

THE HOOVEN AND ALLISON COMPANY, Xenia, Ohio, Appellant,

WILLIAM S. EVATT, Tax Commissioner, Columbus, Ohio,
Appellee

ACKNOWLEDGMENT OF RECEIPT OF NOTICE

Receipt of the notice of appeal of the Hooven and Allison Company, Xenia, Ohio, from the assessment, reassessment, valuation, determination, finding, computation or order of William S. Evatt, Tax Commissioner, Department of Taxation, State of Ohio, as evidenced by his assessment certificates of valuation and distribution dated July 3, 1941, covering the calendar years 1938, 1939, and 1940, is hereby acknowledged this 31st day of July, 1941.

William S. Evatt, Tax Commissioner, Board of Tax Appeals, by Hugh S. Jenkins, Chairman,

[fol. 9] TRANSCRIPT OF 1938 INTER-COUNTY RETURN HOOVEN & ALLISON Co.—Filed Sept. 17, 1942. Board of Tax Appeals, Department of Taxation of Ohio, Columbus, Ohio.

[fol. 10] TIME LIMITATION WAIVER AGREEMENT (Copy)

(Section 5377 General Code of Ohio)

1938 Ohio Personal Property Tax Return

I/We, the undersigned, hereby waive the time limitations applicable to the above return as set forth in Section 5377 of the General Code of Ohio and consent that such time limitation shall be extended to August 9, 1943.

Date Executed Aug. 6, 1940. Name Hooven & Allison Co.

Approved by Dept. of Taxation of Ohio, by Clark, by Auditor.

INTER-COUNTY AND/OR CONSOLIDATED CORPORATION RETURN OF TAXABLE PROPERTY FOR 1938 1941

This RETURN together with the required BALANCE SHEET, must be filed after February 15 and on or before March 31, 1941.

An Inter-County Return (Whether Consolidated or not) must be filed with the Department of Taxation, Intangible Tax Division, State Office Building, Columbus, Ohio.

All Taxable Property MUST be listed as of January 1, 1941, or authorized or required fiscal year end.

ALL TAXABLE PROPERTY MUST be listed as of January 1, 1941, or authorized subsequent date.

RETURNS ARE STRICTLY CONFIDENTIAL AND SEVERE PENALTY IS PROVIDED FOR ANY PUBLIC EMPLOYEE DIVULGING INFORMATION. (Secs. 12924-7 and 12924-8 G. C.)

(PRINT PLAINLY NAMES AND ADDRESSES)

Name of Corporation The Hoover and Allison Company Organized under the Laws of the State of Ohio

Address Principal Accounting Office Xenia, Ohio Location of Prin. Place of Business in Ohio Xenia, Ohio

Date of Organization June 13, 1888 If Foreign Corporation, date of admittance to do business in Ohio _____

CORPORATIONS MAKING CONSOLIDATED RETURN, FILL OUT THE FOLLOWING.

CORPORATIONS MAKING CONSOLIDATED RETURN, FILL OUT THE FOLLOWING.
 This return is made by the above named Corporation as holder of fifty-one percent or more of the common stock of the following named Corporations. See Department of Taxation Rule No. 283 on back of this schedule.

[illegible]

CORPORATIONS, MAKING AN INTER-COUNTY RETURN, FILL OUT THE FOLLOWING.

CORPORATIONS, MAKING AN INTER-COUNTY RETURN, FILL OUT THE FOLLOWING:
 This Corporation (and/or one or more of its subsidiaries) is engaged in business in the following Counties in Ohio, as indicated below:

[illegible]

11.

CORPORATION RETURN FORM No. 945-B-2

One Completed Form Necessary for Each Corporation Reporting in This Return.

(PRINT PLAINLY NAMES AND ADDRESSES)

Name of Corporation The Hoover and Allison Company Organized under the Laws of the State of Ohio
 Address Principal Accounting Office Xenia, Ohio Location of Prin. Place of Business stated in Articles of Incorporation Xenia, Ohio
 Address or other location of Actual Place of Business Xenia, Ohio Date of Organization June 13, 1898
 Address of Ohio Statutory Agent _____ If Foreign Corporation, state address _____

Kind or Kinds of Business in which engaged Manufacturer of Rope, Binder Twine and Cordage

If name of Corporation has been changed during the preceding year, give former name.

THE FOLLOWING QUESTIONS SO FAR AS APPLICABLE MUST BE ANSWERED IN FULL; IF NOT SO ANSWERED, THIS RETURN WILL NOT BE ACCEPTED AND THE PENALTY FOR FAILURE TO FILE RETURN WILL BE ASSESSED

III. (A) Was the corporation engaged in business on January 1, 1941? YES ☒ NO ☐
(B) If not, has it commenced business since January 1, 1941, and before filing this return? YES ☐ NO ☐

IV. What tangible personal property not owned by the Corporation and not shown on its balance sheet did it hold as LESSOR, on CONSIGNMENT, under CONDITIONAL SALES CONTRACT or under SIMILAR AGREEMENT, on the day as of which the Corporation has listed its own property?

In the event the taxpayer filing this report is required to pay the tax on any of this property, please list same on schedule I-C to S-C as case may require.

(A) PROPERTY HELD IN OHIO

[illegible]

(A) Give here information concerning all new buildings or improvements made or erected since April 14, 1940, on any real estate in this country owned or occupied by you; also estimated increase in value of lands so held, due to development of oil, gas, coal, stone, clay, gravel and other mineral works.

None
(Kind of Improvement or Mineral Development)

(On what lot or lands situated)

(Approximate Increase in Value)

(B) Give here information concerning buildings, structures, timber, and other trees so held, wholly or partially destroyed since October 1, 1940 and not restored or to be restored prior to April 13, 1941; also estimated decrease in value of lands so held, due to exhaustion or abandonment of mineral deposits within the past year.

Note
(Kind of Improvement or Mineral Development)

(On what lot or lands situated)

(Approximate Decrease in Value)

VI. Was the Corporation on January 1, 1941, acting, or has it, since that date and before filing this return, commenced to act in the transaction of business for a non-resident of the state of Ohio, or for a foreign corporation not admitted to do business in Ohio, as agent, factor, broker or otherwise? YES ☒ NO ☐

If so, check capacity in which the Corporation acted and give name, address and nature of business as to each principal.

Capacity	Name of Principal	Address	Nature of Business

334,301 - Imports

RECAPITULATION OF LISTED VALUES OF TANGIBLE PERSONAL PROPERTY

County	Taxing District Townships, Special School Districts, Cities and Incorporated Villages	Domestic Animals & Agricultural Products (From Form No. 945 C-1)	Watercraft, Aircraft & Electrical Equipment (From Form No. 945 C-2)	Engines, Machinery, Tools & Implements (From Form No. 945 C-3)	Manufactur- ing Inventories (From Form No. 945 C-6)	Merchandise- ing Inventories (From Form No. 945 C-7)	Other Per- sonal Property Used in Business (From Form No. 945 C-8)	Taxing District Listed Value Totals	County Listed Value Totals (extend taxing district totals for each County)	Penalty
renew	Xenia City			112190	209 882		2 627		425 750	
amilton	Cincinnati					2000			2000	
2-41	Correction Xenia City			112 190	545 630 309 860 233 770		3 700 Former Increase		659 520 425 750 233 770	
					17 ⁰⁰ 3974	09 ⁰⁰				

Form No. 945-D

Recapitulation of Classified or Intangible Personal Property

Total Listed Values and Amounts

CLASSIFIED TAX LIST	TOTAL LISTED VALUE AMOUNT	RATE OF TAX	AMOUNT OF TAX (Rate times Total Listed Value)
Item 1 (From Schedule 6) Productive Investments.....	None	1%	
Item 2 (From Schedule 7) Unproductive Investments.....	None	2 mills	
Item 3 (From Schedule 8) Deposits	25 280 08	2 mills	50 56
Item 4 (From Schedule 9) Credits	None	3 mills	
Item 5 (From Schedule 10) Money and Other Taxable Intangibles.....	200 00	3 mills	60
Total Amount—Aggregate Listed Value and Classified Tax (Add above Classified amounts).....	25 480 08	. . .	51 16

OATH

(Corporate seal should be impressed so as to effect the legible reading of any written words or figures.)

STATE OF OHIO, CARROLL COUNTY, ss.:

We do solemnly swear that we are the President and the Treasurer of the above named Corporation and do further swear that the answers which we have given to the specific questions asked in the foregoing tax return, so far as within our knowledge, are true; that the list contains a full disclosure of all property required by law to be listed for taxation on behalf of said Corporation; that the amounts which we have set down therein in our itemization of taxable property are, so far as they represent facts within our knowledge, true and correct; and that, in all cases in which we have answered any such question, or given any such amount, otherwise than from our own positive knowledge, such answer or amount represents our opinion and judgment, based upon the best information available to us.

SWORN to and subscribed before me this 5th day (Sign here) Charles L. Darlington
of April, 1941. Title President
Louis F. Clark (Sign here) E. D. Martin
Deputy Auditor—Notary—Deputy Assessor. Title Treasurer

Was this Return prepared by persons within your own organization? Yes If answer is "NO," show in space below the name and address of person or firm who prepared the return:

Name _____ Address _____

Tax Form No. 945-1
Prescribed by The Department of Taxation
William S. Ewert, Tax Commissioner
For all Corporations using Form No. 945.

Balance Sheet for Inter-County and/or Consolidated Corporations

Indicate whether this year
corresponds with that on
Federal Income Tax Return.
☒ Yes. ☐ No.

FOR (Name) The Heaven and Allison Company

(Address) Xenia, Ohio

Year Ended December 31, 1937

Balance Sheet Item No.	ITEMS ASSETS	OHIO ANALYSIS COLUMNS END of Year						BEGINNING of Year TOTALS	FEDERAL COLUMNS As Reported for Federal Income Tax END of Taxable Year			
		AMOUNT			TOTAL	AMOUNT	TOTAL					
		WITHIN OHIO	WITHOUT OHIO									
CASH—												
1	On deposit in Ohio banks and/or Building and Loan Associations, taxed at source	29	501	65				55	522	22	55	522
2	On deposit elsewhere within Ohio [Sch. 8]											
3	Unwithdrawable deposits in Ohio financial institutions closed November 12, 1940 (A. State Bank (Taxed at Source Nov. 12, 1940) B. National Bank (Sch. 10))	200										
4	On hand or otherwise not taxed at source [Sch. 10]											
5	ON DEPOSIT OUTSIDE OF OHIO: Yielding annual income exceeding 4% of principal sum withdrawable [Sch. 6 (C)]											
6	Not yielding such an income				24	317	07					
7	Deposits for entire business of owner [Sch. 8 for Ohio Corp.]											
8	Other deposits, withdrawable in course of business by office without Ohio				1	402	35	55	522	05		
9	NOTES RECEIVABLE											
10	Less Book reserves for bad debts											
11	Due within one year from date of inception [Sch. 9, A-1, A-3]				3	465	21				3	465
12	Due after one year from date of inception: a. Interest bearing (whether productive [Sch. 6 (C)] or unproductive [Sch. 7 (B)] b. Non-interest bearing [Sch. 10]							3	465	21		
13	ACCOUNTS RECEIVABLE											
14	Less Book reserves for bad debts											
15	Due within one year from date of inception [Sch. 9, A-1, A-3]	29	426	49	20	035	53				49	532
16	Due after one year from date of inception: a. Interest bearing (whether Productive [Sch. 6 (C)] or unproductive [Sch. 7 (B)] b. Non-interest bearing [Sch. 10]											
INVENTORIES—												
17	In manufacture: Raw materials	360	178	48	250	22					361	028
18	Work in process (including burden)	55	262	25							55	262
19	Supplies for manufacture	44	275	60							44	275
20	Finished goods stored in Ohio county of manufacture	355	764	27							355	764
21	Finished goods not so stored and not included below	2	170	20	324	475	51				326	644
22	Consigned to others (Describe fully—see reference 4)											
23	Goods stored in public warehouse											
24	Supplies not for manufacture and not included below											
25	In agriculture: Products on farms											
26	In merchandising, mining, and other business: Goods held for sale											
27	Supplies and/or other inventoried goods											
28	Materials and supplies used in generation or distribution of electricity for others											
29	Grain not subject to property tax											
30	Other (Federal or Ohio)							1 441 683 03	1 545 128 94		1 441 683	

INVESTMENTS—Non-Taxable

31 Stocks of Corporations other than listing corporation

[illegible]

[illegible]

REFERENCES

[fol. 18] TRANSCRIPT OF 1939 INTER-COUNTY RETURN HOOVEN
& ALLISON Co.—Filed Sept. 17, 1942. Board of Tax Ap-
peals, Department of Taxation of Ohio, Columbus, Ohio

INTER-COUNTY AND/OR CONSOLIDATED
CORPORATION RETURN OF TAXABLE PROPERTY FOR 1952

*This RETURN together with the required BALANCE SHEET must be filed after February 15 and on or before March 31, 1941.

An Inter-County Return (Whether Consolidated or not) must be filed with the Department of Taxation, Intangible Tax Division, State Office Building, Columbus, Ohio.

All Taxable Property MUST be listed as of January 1, 1941, or authorized or required fiscal year end.

RETURNS ARE STRICTLY CONFIDENTIAL and SEVERE PENALTY IS PROVIDED FOR ANY PUBLIC EMPLOYEE DIVULGING INFORMATION. (Secs. 12924-7 and 12924-8 G. C.)

(PRINT PLAINLY NAMES AND ADDRESSES)

Name of Corporation The Hooven and Allison Company Organized under the Laws of the State of Ohio

Address Principal Accounting Office Xenia, Ohio Location of Prin. Place of Business in Ohio Xenia, Ohio

Date of Organization June 15, 1988 If Foreign Corporation, date of admittance to do business in Ohio

CORPORATIONS MAKING CONSOLIDATED RETURN, FILL OUT THE FOLLOWING.

This return is made by the above named Corporation as holder of fifty-one percent or more of the common stock of the following named Corporations. See Department of Taxation Rule No. 203 on back of this schedule.

[illegible]

CORPORATIONS MAKING AN INTER-COUNTY RETURN, FILL OUT THE FOLLOWING.

This Corporation (and/or one or more of its subsidiaries) is engaged in Business in the following Countries in Ohio, as indicated below:

County	Kind of Business	NAME (TRADE OR OTHERWISE) UNDER WHICH BUSINESS CONDUCTED IN EACH LOCATION
Greene	Manufacture of Rope, Binder Twine and Cordage	
Hamilton	Storage of manufactured goods	
Cuyahoga	Storage of manufactured goods	

If Foreign Corporation,
date of admittance to do business in Ohio

CORPORATIONS MAKING CONSOLIDATED RETURN, FILL OUT THE FOLLOWING.
 This return is made by the above named Corporation as holder of fifty-one percent or more of the common stock of the following named Corporations. See Department of Taxation Rule No. 203 on back of this schedule.

This return is made by the above named Corporation as holder of fifty-one percent or more of the common stock of the following named Corporations. See Department of Taxation Rule No. 203 on back of this schedule.

CORPORATIONS MAKING AN INTER-COUNTY RETURN, FILL OUT THE FOLLOWING.
This Corporation (and/or

This Corporation (and/or one or more of its subsidiaries) is engaged in business in the following Counties in Ohio, as indicated below.

THE FOLLOWING QUESTIONS, SO FAR AS APPLICABLE, MUST BE ANSWERED IN FULL—AND TO THE EXTENT INDICATED ARE IN LIEU OF QUESTIONS STATED ON THE SEPARATE RETURN FORMS FILED HEREWITH. IF NOT SO ANSWERED, THIS RETURN WILL NOT BE ACCEPTED AND THE PENALTY FOR FAILURE TO FILE RETURN WILL BE ASSESSED.

7V. If this is a consolidated return—on what date was permission granted to file
(See Department of Taxation Rule No. 201).

CORPORATION RETURN FORM No. 945-B-2

One Completed Form Necessary for Each Corporation Reporting in This Return.

(PRINT PLAINLY NAMES AND ADDRESSES)

Name of Corporation The Heavren and Allison Company

Address Principal Accounting Office Xenia, Ohio

Address or other location of Actual Place of Business Xenia, Ohio

Date of Organization June 18, 1933

Address of Ohio Statutory Agent _____

If Foreign Corporation,
date admitted to do business in Ohio _____

Kind or Kinds of Business in which engaged Manufacture of Rope, Binder Twine and Cordage.

If name of Corporation has been changed during the preceding year, give former name _____

THE FOLLOWING QUESTIONS SO FAR AS APPLICABLE MUST BE ANSWERED IN FULL; IF NOT SO ANSWERED, THIS RETURN WILL NOT BE ACCEPTED AND THE PENALTY FOR FAILURE TO FILE RETURN WILL BE ASSESSED

III. (A) Was the corporation engaged in business on January 1, 1941? YES ☒ NO ☐
(B) If not, has it commenced business since January 1, 1941, and before filing this return? YES ☐ NO ☐

IV. What tangible personal property not owned by the Corporation and not shown on its balance sheet did it hold as LESSEE, on CONSIGNMENT, under CONDITIONAL SALES, CONTRACT or under SIMILAR AGREEMENT, on the day as of which the Corporation has listed its own property?

In the event the taxpayer filing this report is required to pay the tax on any of this property, please list same on schedules 1-C to 8-C as once may require.

(A) PROPERTY HELD IN OHIO—

[illegible]

V. (A) Give here information concerning all new buildings or improvements made or erected since April 14, 1940, on any real estate in this county owned or occupied by you; also estimated increase in value of lands so held, due to development of oil, gas, coal, stone, clay, gravel and other mineral works.

[illegible]

(B) Give here information concerning buildings, structures, timber, and other trees so held, wholly or partially destroyed since October 1, 1948 and not restored or to be restored prior to April 13, 1949; also estimated decrease in value of lands so held, due to exhaustion or abandonment of mineral deposits within the past year.

Improvement or Mineral Development)	(On what lot or lands situated)	(Approximate Decrease in Value)

VI. Was the Corporation on January 1, 1941, acting, or has it, since that date and before filing this return, commenced to act in the transaction of business for a non-resident of the state of Ohio, or for a foreign corporation not admitted to do business in Ohio, as agent, factor, broker or otherwise? YES ☒ NO ☒

If so, check capacity in which the Corporation acted and give name, address and nature of business as to each principal.

Capacity	Name of Principal	Address	Nature of Business

during the preceding year, give former name

THE FOLLOWING QUESTIONS SO FAR AS APPLICABLE MUST BE ANSWERED IN FULL; IF NOT SO ANSWERED, THIS RETURN WILL NOT BE ACCEPTED AND THE PENALTY FOR FAILURE TO FILE RETURN WILL BE ASSESSED.

- III. (A) Was the corporation engaged in business on January 1, 1941? YES ☒ NO ☐
(B) If not, has it commenced business since January 1, 1941, and before filing this return? YES ☐ NO ☐

- IV. What tangible personal property not owned by the Corporation and not shown on its balance sheet did it hold as LESSEE, on CONSIGNMENT, under CONDITIONAL SALES CONTRACT or under SIMILAR AGREEMENT, on the day as of which the Corporation has listed its own property?

In the event the taxpayer filing this report is required to pay the tax on any of this property, please list same on schedules 1-C to 8-C as case may require.

(A) PROPERTY HELD IN OHIO-

[illegible]

- V. (A) Give here information concerning all new buildings or improvements made or erected since April 14, 1940, on any real estate in this county owned or controlled by you; also estimated increase in value of lands so held, due to development of oil, gas, coal, stone, clay, gravel and other mineral works.

—1000—

(Detail of Improvement or Mineral Development)

(On what lot or lands situated)

(Approximate Increase in Value)

- (7) Give very information concerning buildings, structures, timber, and other trees so held, wholly or partially destroyed since October 1, 1940 and not restored or to be restored prior to April 13, 1961, also estimated decrease in value of lands so held, due to exhaustion or abandonment of mineral deposits within the past year.

1992

Topic of Improvement or Mineral Development)

(On what lot or lands situated)

(Approximate Decrease in Value)

- VI. Was the Corporation on January 1, 1941, acting, or has it, since that date and before filing this return, commenced to act in the transaction of business for a non-resident of the state of Ohio, or for a foreign corporation not admitted to do business in Ohio, as agent, factor, broker or otherwise? YES ☐ NO ☒

If so, check capacity in which the Corporation acted and give name, address and nature of business as to each principal.

[illegible]

- VII. As shown by the records of the corporation as of the beginning of business January 1, 1941, did any shareholder of any class of stock reside in Ohio? YES ☒ NO ☐ If the answer is "YES", furnish the following information:

(A) REPORT AS TO CAPITAL STOCK—

Description of Class	Par Value Each Share (if any)	Aggregate Dividend Rate or Amount per share for calendar Year 1940	Description of Class	Par Value Each Share (if any)	Aggregate Dividend Rate or Amount per share for calendar Year 1940
Common	\$100.00	1.00			
Preferred	100.00	.80			

(B) REPORTS AS TO OHIO STOCKHOLDERS AND CORPORATION SECURITY RECORD:

We have filled out 243 (number of) Co. Aud. Tax Form No. 939, which constitutes a complete report of shares of stock of this corporation held by Ohio residents (corporations omitted); also, Co. Aud. Tax Form No. 918, corporation security record, both as of the beginning of business January 1, 1941. Form 939 was transmitted to The Department of Taxation (date) January 18, 1942
Form 938 (date) January 24, 1942

NOTE: Both of these forms constitute an essential part of the corporation's tax return; and if not completely filled out and duly forwarded, the return cannot be deemed completely filed and, therefore, is subject to a penalty in addition to the tax.

List here all property of the following kinds owned by the Corporation and used in business in this State on listing day: Engines, machinery, tools and implements used in Agriculture, (b) Refining and Manufacturing, (c) Mining, (d) Machinery, Tools and implements used in Laundries and Dry Cleaning Plants, (e) Stone Plants, (f) Gravel Plants. Omit from this inventory Engines, Machinery and Boilers which constitute fixtures on real estate. Omit from this return MOTOR VEHICLES registered by the Corporation as owner, also PATTERNS, JIGS, DIES and DRAWINGS. List separately property used in each Taxing District. To list as per book accounts, see Form No. 945 A-1, Part 2.

LISTED VALUES	
Not actually used in or held for production	Used in or held for production
(a) Agriculture	(a) Agriculture
(b) Refining & Mfg.	(b) Refining & Mfg.
(c) Mining	(c) Mining
(d) Laundries & Dry Cleaning	(d) Laundries & Dry Cleaning
(e) Stone Plants	(e) Stone Plants
(f) Gravel Plants	(f) Gravel Plants
70% of Dep. Book Value	50% of Dep. Book Value

County	Taxing District	Number	Description Kind Size	Depreciated Book Value	Description Kind Size	Depreciated Book Value	Total Depreciated Book Value		
Oswego	Ionia City		Garage	174.87	Amount added by	24.00	208.87		208.87
			Machinery and		Tax Commission				
			Equipment						
			12/31/28		12/31/28				
			Cost	Book	Cost	Book			
			1,526	32.26	17,26	17026			
			1,124	34.13	77,242	203,136			
			1,160	153.43	112,412	144,112			
			1,000	47.17	23.33	6,799			
			11,125	33.17	7,003	26,988			
			1,145	127					
			160	127					
					20,388	10,388			

CHINERY AND EQUIPMENT

List separately property used in each Taxing District. To list as per book accounts, see Form No. 945 A-1, Part 2.

**Listed
Value 50%
of Average
Value**

Prescribed by the Commission of OHS

[illegible]

Form No. 945-C-6

INSTRUCTIONS—Use of Form 945 C-7.

MERCHANDISING OR SIMILAR INVENTORIES LISTING FORM.

This Form is to be used by Merchants in listing their average monthly Inventory Values. To fill out this schedule, insert the county name in the column at the left side of the sheet and then to the right of this the various Taxing Districts in which Tangible personal property of this type is located. Opposite each Taxing District named, enter in the columns provided the information as required by the Form, totaling such values in the column headed "Total Monthly Inventory Values". In the next column show the Average Monthly Inventory Values and then extend for listing purposes to the 70% column such values for each Taxing District. The totals as arrived at the listed value column must be carried forward to the recapitulation Form 945 D.

List values in dollars only and make all items end in 0, viz., 100--110--120.

Segregate inventories of consigned goods and give name and address of consignor.

RECAPITULATION OF LISTED VALUES OF TANGIBLE PERSONAL PROPERTY

County	Taxing District Townships, Special School Districts, Cities and Incorporated Villages	Domestic Animals & Agricultural Products (From Form No. 945 C-1)	Watercraft, Aircraft & Electrical Equipment (From Form No. 945 C-2)	Engines, Machinery, Tools & Implements (From Form No. 945 C-3)	Manufactur- ing Inventories (From Form No. 945 C-6)	Merchandis- ing Inventories (From Form No. 945 C-7)	Other, Per- sonal Property Used in Business (From Form No. 945 C-8)	Taxing District Listed Value Totals	County Listed Value Totals (extend taxing district totals for each County)
Greene	Ionia City			103274	350094		3460		468780
Hamilton	Cincinnati					1980			1980
Cuyahoga	Cleveland					110			110
1/2/41 - Correction Ionia City		Imports added to previous report							468780
				103274	477400		3460	604130	

Recapitulation of Classified or Intangible Personal Property Total Listed Values and Amounts

CLASSIFIED TAX LIST	TOTAL LISTED VALUE AMOUNT	RATE OF TAX	AMOUNT OF TAX (Rate times Total Listed Value)
Item 1 (From Schedule 6) Productive Investments.....	None	5%	
Item 2 (From Schedule 7) Unproductive Investments.....	None	2 mills	
Item 3 (From Schedule 8) Deposits.....	102 182 60	2 mills	204 37
Item 4 (From Schedule 9) Credits.....	46 447 80	3 mills	139 32
Item 5 (From Schedule 10) Money and Other Taxable Intangibles.....	200 00	3 mills	60
Total Amount—Aggregate Listed Value and Classified Tax (Add above Classified amounts).....	148 833 90		544 30

OATH

(Corporate seal should be impressed so as not to affect the legible reading of any written words or figures.)

STATE OF OHIO, OSHTOWN COUNTY, ss.:

We do solemnly affirm that we are the President and the Treasurer of the above named Corporation and do further swear that the answers which we have given to the specific questions asked in the foregoing tax return, so far as within our knowledge, are true; that the list contains a full disclosure of all property required by law to be listed for taxation on behalf of said Corporation; that the amounts which we have set down therein in our itemization of taxable property are, so far as they represent facts within our knowledge, true and correct; and that, in all cases in which we have answered any such question, or given any such amount, otherwise than from our own positive knowledge, such answer or amount represents our opinion and judgment, based upon the best information available to us.

SWORN to and subscribed before me this 27th day (Sign here) Charles L. Darlington
of April 1941. Title President
Clara J. Marshall (Sign here) H. E. Martin
Deputy Assessor. Title Treasurer

Was this Return prepared by persons within your own organization? Yes If answer is "NO," show in space below the name and address of person or firm who prepared the return:

Name _____ Address _____

Balance Sheet for Inter-County and/or Consolidated Corporations

Indicate whether this year end
corresponds with that on your
Federal Income Tax Return.
☐ Yes. ☐ No.

FOR (Name) The Heaven and Allison Company (Address) Xenia, Ohio Year Ended December 31 1938, 1938.

Balance Sheet Item No.	ITEMS ASSETS	OHIO ANALYSIS COLUMNS END of Year			BEGINNING of Year TOTALS	FEDERAL COLUMNS As Reported for Federal Income Tax END of Taxable Year	
		AMOUNT		TOTAL		AMOUNT	TOTAL
		WITHIN OHIO	WITHOUT OHIO				
1	CASH—						
2	On deposit in Ohio banks and/or Building and Loan Associations, taxed at source	59 091 68			55 921 08		151 299 21
3	On deposit elsewhere within Ohio [Sch. 8]						
4	Unwithdrawable deposits in [A. State Bank (Taxed at Source, Nov. 12, 1940) Ohio financial institutions closed November 12, 1940 [B. National Bank (Sch. 10)]	300 00					
5	On hand or otherwise not taxed at source [Sch. 10]						
6	ON DEPOSIT OUTSIDE OF OHIO: Yielding annual income exceeding 4% of principal sum withdrawable [Sch. 5 (C)]		90 221 99				
7	Not yielding such an income						
8	Deposits for entire business of owner [Sch. 8 for Ohio Corp.]		1 785 54	151 299 21			
9	Other deposits, withdrawable in course of business by office without Ohio						
10	NOTES RECEIVABLE				2 465 21		2 207 69
11	Less Book reserves for bad debts						
12	Due within one year from date of inception [Sch. 9, A-1, A-3]		2 207 69				
13	Due after one year from date of inception: a. Interest bearing (whether productive [Sch. 6 (C)] or unproductive [Sch. 7 (B)] b. Non-interest bearing [Sch. 10]			2 207 69			
14	ACCOUNTS RECEIVABLE				49 532 02		77 426 84
15	Less Book reserves for bad debts						
16	Due within one year from date of inception [Sch. 9, A-1, A-3]	44 975 88	32 450 96				
17	Due after one year from date of inception: a. Interest bearing (whether Productive [Sch. 6 (C)] or unproductive [Sch. 7 (B)] b. Non-interest bearing [Sch. 10]			77 426 84			
18	INVENTORIES—						
19	In manufacture: Raw materials	331 927 54				331 927 54	
20	Work in process (including burden)	46 236 23				46 236 23	
21	Supplies for manufacture	35 559 37				35 559 37	
22	Finished goods stored in Ohio county of manufacture	355 573 18				355 573 18	
23	Finished goods not so stored and not included below	2 329 28	256 249 45			258 648 73	
24	Consigned to others (Describe fully—see reference 4)						
25	Goods stored in public warehouses						
26	Supplies not for manufacture and not included below						
27	In agriculture: Products on farms						
28	In merchandising, mining, and other business: Goods held for sale						
29	Supplies and/or other inventoried goods						
30	Materials and supplies used in generation or distribution of electricity for others						
31	Grain not subject to property tax						
32	Other (Federal or Ohio)			1 028 015 02	1 441 683 03		1 028 015 02

[illegible]

25

[fol. 27] TRANSCRIPT OF 1940 INTER-COUNTY RETURN HOOVEN
& ALLISON Co.—Filed Sept. 17, 1942. Board of Tax
Appeals, Department of Taxation of Ohio, Columbus,
Ohio

2

6

INTER-COUNTY AND/OR CONSOLIDATED
CORPORATION RETURN OF TAXABLE PROPERTY FOR 1949

This RETURN together with the required BALANCE SHEET must be filed after February 15 and on or before March 31, 1941.

An Inter-County Return (Whether Consolidated or not) must be filed with the Department of Taxation, Intangible Tax Division, State Office Building, Columbus, Ohio.

All Taxable Property MUST be listed as of January 1, 1941, or authorized or required fiscal year end.

RETURNS ARE STRICTLY CONFIDENTIAL and SEVERE PENALTY IS PROVIDED FOR ANY PUBLIC EMPLOYEE DIVULGING INFORMATION. (Secs. 12924-7 and 12924-8 G. C.)

(PRINT PLAINLY NAMES AND ADDRESSES)

Name of Corporation The Heoren and Allison Company Organized under the Laws of the State of Ohio

Address Principal Accounting Office	Xenia, Ohio	Location of Prin. Place of Business in Ohio
--	-------------	--

Date of Organization June 15, 1966 If Foreign Corporation, date of admittance to do business in Ohio _____

CORPORATIONS MAKING CONSOLIDATED RETURN. FILL OUT THE FOLLOWING.

This return is made by the above named Corporation as holder of fifty-one percent or more of the common stock of the following named Corporations. See Department of Taxation Rule No. 283 on back of this schedule.

[illegible]

CORPORATIONS MAKING AN INTER-COUNTY RETURN, FILL OUT THE FOLLOWING.

This Corporation (and/or one or more of its subsidiaries) is engaged in Business in the following Counties in Ohio, as indicated below.

[illegible]

CORPORATION RETURN FORM No. 945-B-2

One Completed Form Necessary for Each Corporation Reporting in This Return.

(PRINT PLAINLY NAMES AND ADDRESSES)

Name of Corporation The Haveren and Allison Co. Organized under the Laws of the State of Ohio

Address Principal Accounting Office Xenia, Ohio Location of P.O. Place of Business stated in Articles of Incorporation Xenia

Address or other location of Actual Place of Business Xenia, Ohio Date of Organization June 12, 1928

Address of Ohio Statutory Agent Xenia, Ohio If Foreign Corporation, date admitted to do business in Ohio _____

Kind or Kinds of Business in which engaged Manufacture of Rope, Binder Twine

If name of Corporation has been changed during the preceding year, give former name _____

THE FOLLOWING QUESTIONS SO FAR AS APPLICABLE MUST BE ANSWERED IN FULL; IF NOT SO ANSWERED, THIS RETURN WILL NOT BE ACCEPTED AND THE PENALTY FOR FAILURE TO FILE RETURN WILL BE ASSESSED.

iii. (A) Was the corporation engaged in business on January 1, 1941? YES ☒ NO ☐
(B) If not, has it commenced business since January 1, 1941, and before filing this return? YES ☐ NO ☐

IV. What tangible prop. (A) PROPERTY HELD IN OHIO—

cessed property not owned by the Corporation and not shown on its balance sheet did it hold as LESSOR, or COMMISSIONER, under CONDITIONAL SALES CONTRACT or under SIMILAR AGREEMENT, on the day as of which the Corporation has listed its own property?

In the event the
employer filing this
report is required to
pay the tax on any of
this property, please
let some on subdi-
vision 1-C to 8-C as
one may require.

[illegible]

V: (A) Give here information concerning all new buildings or improvements made or erected since April 14, 1940, on any real estate in this county owned or controlled by you; also estimated increase in value of lands so held, due to development of oil, gas, coal, stone, clay, gravel and other mineral works.

1	(Kind of Improvement or Mineral Development)		(On what lot or lands situated)		(Approximate Increase in Value)

(B) Gave here information concerning buildings, structures, timber, and other trees on hold, wholly or partially destroyed since October 1, 1940 and not restored or to be restored prior to April 13, 1941; also estimated decrease in value of land on hold, due to exhaustion or abandonment of mineral deposits within the past year.

Item	(On what lot or lands situated)	(Approximate Decrease in Value)
(Kind of Improvement or Mineral Development)		

VI. Was the Corporation on January 1, 1941, acting, or has it, since that date and before filing this return, commenced to act in the transaction of business for a non-resident of the state of Ohio, or for a foreign corporation not admitted to do business in Ohio, as agent, factor, broker or otherwise? YES ☐ NO ☒

If so, check capacity in which the Corporation acted and give name, address and nature of business as to each principal.

[illegible]

What tangible personal property not owned by the Corporation and not shown on the balance sheet did it hold as LESSEE, or COMPLETION, or under CONDITIONAL SALES CONTRACT or under SIMILAR AGREEMENT, on the day as of which the Corporation has listed its own property?

[illegible]

In the event the taxpayer filing this report is required to pay the tax on any of this property, please list same on schedule I-C to S-C as any other assets.

None
(Kind of Improvement or Mental Development)

(On what lot or lands situated)

(An estimated increase in Value)

Item
(Kind of Improvement or Mineral Development)

(On what lot or lands situated)

(Approximate Decrease in Value)

If so, check capacity in which the Corporation acted and give name, address and nature of business as to each principal.

[illegible]

(A) REPORT AS TO CAPITAL STOCK—

[illegible]

We have filled out Form 939 (number of) Co. And. Tax Form No. 939, which constitutes a complete report of shares of stock of this corporation, held by Ohio residents (corporations omitted); also, Co. And. Tax Form No. 938, corporation beginning of business January 1, 1946, Form 939, was transmitted to the Department of Taxation (date) January 30, 1946

NOTE: Both of these forms constitute an essential part of the corporation's tax return, and if not completely filled out and duly forwarded the return cannot be deemed completely filed and, therefore, is subject to a penalty addition to the tax.

List here an estimated average value of a classified inventory of all personal property owned and used by the Corporation IN THIS STATE in MANUFACTURING or REFINING, and subject to be listed on the AVERAGE VALUE basis for the year or part thereof.

(Check the respective source of figures.) ☐ Physical Inventory; ☐ Perpetual Book Inventory. State date of last Physical Inventory: December 31, 1939

Check the Inventory Method ☐ Cost; ☒ The Lower of Cost or Market; ☐ Other Methods, outline below _____

Inventory of finished products used in manufacturing or refining NOT KEPT or STORED at the place of manufacture or in a warehouse IN THE COUNTY where manufactured or inventory held for retail sale MUST BE LISTED AS MERCHANDISE on Form No. 945 C-7.

List separately property used in each Taxing District. To list as per book accounts, see Form No. 945 A-1, Part 2.

County	Taxing District	January	February	March	April	May	June	July	August	September	October	November	December	Total Monthly Inventory Values	Average Monthly Inventory Value (divide by total number of months in business)	Listed Value 50% of Average Value
Craws	Xenia City	488 344	495 679	523 000	534 013	531 019	509 111	261 797	275 773	282 741	230 234	226 218	234 021	4 645 039	386 005	193 007
	Imports	174 892	142 170	228 212	197 233	171 670	167 617	206 790	237 802	222 762	207 577	222 091	230 360	2 161 791	221 790	110 893
													757 380		608 785	307 390
	Paul Smith report															
	Kalam. Shet 19-39															
	Kar Mat															
	Wine P															
	Finished gum Co															
	Applied															
	Finished Oil															
	Reported by															
	C-6 19-39															
	Imports															
	C-7															

11,457 inv. 24

INSTRUCTIONS—Use of Form 945 C-1.

MERCHANDISING OR SIMILAR INVENTORIES LISTING FORM.

This Form is to be used by Merchants in listing their average monthly Inventory Values. To fill out this schedule, insert the county name in the column at the left side of the sheet and then to the right of this the various Taxing Districts in which Tangible personal property of this type is located. Opposite each Taxing District named, enter in the columns provided the information as required by the Form, totaling such values in the column headed "Total Monthly Inventory Value". In the next column show the Average Monthly Inventory Values and then extend for listing purposes to the 70% column such values for each Taxing District. The totals as arrived at the listed value column must be carried forward to the recapitulation Form 945 D.

List values in dollars only and make all items end in 0, viz., 100—110—120.

Segregate inventories of consigned goods and give name and address of consignor.

RECAPITULATION OF LISTED VALUES OF TANGIBLE PERSONAL PROPERTY

County	Taxing District Townships, Special School Districts, Cities and Incorporated Villages	Domestic Animals & Agricultural Products (From Form No. 945 C-1)	Watercraft, Aircraft & Electrical Equipment (From Form No. 945 C-2)	Engines, Machinery, Tools & Implements (From Form No. 945 C-3)	Manufactur- ing Inventories (From Form No. 945 C-5)	Merchan- dis- ing Inventories (From Form No. 945 C-7)	Other Per- sonal Property Used in Business (From Form No. 945 C-8)	Taxing District Listed Value Totals	County Listed Value Totals (extend taxing district totals for each County)
Deane	Xenia City			121100	193 697		4 500		319180
Hamilton	Cincinnati					1 679			167
7-2-41 corrected per EHRHART Report Imparts Added Back									
	XENIA			121100	301370		4560	430000	
					110245		Farmer	319180	
								110245	

Recapitulation of Classified or Intangible Personal Property Total Listed Values and Amounts

CLASSIFIED TAX LIST	TOTAL LISTED VALUE AMOUNT	RATE OF TAX	AMOUNT OF TAX (Rate times Total Listed Value)
Item 1 (From Schedule 6) Productive Investments	None	5%	
Item 2 (From Schedule 7) Unproductive Investments	None	2 mills	
Item 3 (From Schedule 8) Deposits	303,750	2 mills	607.48
Item 4 (From Schedule 9) Credits	58,510	5 mills	292.55
Item 5 (From Schedule 10) Money and Other Taxable Intangibles	25,000	5 mills	125.00
Total Amount—Aggregate Listed Value and Classified Tax (Add above Classified amounts)	687,260		783.71

OATH

(Corporate seal should be impressed so as not to affect the legible reading of any written words or figures.)

STATE OF OHIO, Greene COUNTY, ss.:

We do solemnly swear that we are the President and the Treasurer of the above named Corporation and do further swear that the answers which we have given to the specific questions asked in the foregoing tax return, so far as within our knowledge, are true; that the list contains a full disclosure of all property required by law to be listed for taxation on behalf of said Corporation; that the amounts which we have set down therein in our itemization of taxable property are, so far as they represent facts within our knowledge, true and correct; and that, in all cases in which we have answered any such question, or given any such amount, otherwise than from our own positive knowledge, such answer or amount represents our opinion and judgment, based upon the best information available to us.

SWORN to and subscribed before me this 20th day

(Sign here) Charles L. Darlington

of April, 1941.

Title President

Clara E. Marshall

(Sign here) E. D. Martin

Notary Public—Notary—Deputy—Assistant

Title Treasurer

Was this Return prepared by persons within your own organization? If answer is "NO," show in space below the name and address of person or firm who prepared the return:

Name Address

Balance Sheet for Inter-County and/or Consolidated Corporations

Indicate whether this year and
corresponds with that on your
Federal Income Tax Return.
☒ Yes. ☐ No.

FOR (Name) The Hacten and Allison Company (Address) Xenia, Ohio Year Ended December 31, 1939

Balance Sheet Item No.	ITEMS ASSETS	OHIO ANALYSIS COLUMNS END of Year			BEGINNING of Year TOTALS	FEDERAL COLUMNS As Reported for Federal Income Tax END of Taxable Year	
		AMOUNT		TOTAL		AMOUNT	TOTAL
		WITHIN OHIO	WITHOUT OHIO				
	CASH—						
1	On deposit in Ohio banks and/or Building and Loan Associations, taxed at source.....	191 832 41	44		151 299 21		540 780 28
2	On deposit elsewhere within Ohio [Sch. 8].....						
3	Unwithdrawable deposits in { A. State Bank (Taxed at Source, Nov. 12, 1940)..... Ohio financial institutions closed November 12, 1940 { B. National Bank (Sch. 10) (250 00	Sch 10				
4	On hand or otherwise not taxed at source [Sch. 10].....						
5	ON DEPOSIT OUTSIDE OF OHIO: Yielding annual income exceeding 4% of principal sum withdrawable [Sch. 6 (C)].....						
6	Not yielding such an income.....		345 320 87				
7	Deposits for entire business of owner [Sch. 8 for Ohio Corp.].....						
8	Other deposits, withdrawable in course of business by office without Ohio.....		3 177 04	540 780 28			
9	NOTES RECEIVABLE.....						
10	Less Book reserves for bad debts.....				2 207 59		1 382 11
11	Due within one year from date of inception [Sch. 9, A-1, A-3].....		1 382 11				
12	Due after one year from date of inception: a. Interest bearing (whether productive [Sch. 6 (C)] or unproductive [Sch. 7 (B)].....				1382 11	Sch 9	
	b. Non-interest bearing [Sch. 10].....						
13	ACCOUNTS RECEIVABLE.....	140,306.81					
14	Less Book reserves for bad debts.....	40,862.94			77 426 84		28 055 82
15	Due within one year from date of inception [Sch. 9, A-1, A-3].....						
16	Due after one year from date of inception: a. Interest bearing (whether Productive [Sch. 6 (C)] or unproductive [Sch. 7 (B)].....		67 557 08	30 498 74		Sch 9	
	b. Non-interest bearing [Sch. 10].....				28 055 82		
	INVENTORIES—						
17	In manufacture: Raw materials.....	259 820 01	12 777 36			272 597 37	
18	Work in process (including burden).....	38 226 23				38 226 23	
19	Supplies for manufacture.....	37 234 52				137 234 52	
20	Finished goods stored in Ohio county of manufacture.....	136 863 49				136 863 49	
21	Finished goods not so stored and not included below.....	1184 13	205 286 94			206 471 07	
22	Consigned to others (Describe fully—see reference 4).....						
23	Goods stored in public warehouse.....						
24	Supplies not for manufacture and not included below.....						
25	In agriculture: Products on farms.....						
26	In merchandising, mining, and other business: Goods held for sale.....						
27	Supplies and/or other inventoried goods.....						
28	Materials and supplies used in generation or distribution of electricity for others.....						
29	Grain not subject to property tax.....						
30	Other (Federal or Ohio).....			691 092 67	1022 015 02		691 092 67

Do not check
with return
for next year
applied

INVESTMENTS—Non-Taxable—

- 31 Stocks of Corporations other than listing corporation
- 32 U. S. Government, District and Territorial Bonds
- 33 Other Non-Taxable Federal Securities
- 34 Ohio Municipal, County, School and other local bonds issued prior to Jan. 1, 1913

INVESTMENTS—Taxable—

- 35 Productive—
Other Bonds, Certificates of Indebtedness, Debentures, Notes and Other Interest-Bearing Obligations yielding income
- 36 Unproductive—
Other Bonds, Certificates of Indebtedness, Debentures, Notes and Other Obligations not yielding income

37 DEFERRED CHARGES (a)—Prepaid Insurance [Sch. 9, A-1, A-3]

38 Prepaid taxes [Sch. 9, A-1, A-3]

39 Enter in Detail on Form 945N { All other Intangibles [Sch. 9, A-1, A-3]

FIXED ASSETS—

- 41 Land (2)
- 42 Buildings
- 43 Less reserves for depreciation (1)
- 44 Machinery and Equipment taxed as Real Estate
- 45 Less reserves for depreciation (1)
- 46 Machinery and equipment:
- 47 a. Used in manufacturing, mining or agriculture
- 48 Less reserves for depreciation (1)
- 49 b. Used in other business
- 50 Less reserves for depreciation (1)
- 51 c. Leased and/or loaned to others
- 52 Less reserves for depreciation (1)
- 53 Furniture and Fixtures
- 54 Less reserves for depreciation (1)
- 55 Delivery Equipment (Show automobiles separately from other equipment)
- 56 a. Used in manufacturing, mining or agriculture
- 57 Less reserves for depreciation (1)
- 58 b. Used in other business
- 59 Less reserves for depreciation (1)
- 60 c. Automobiles and Trucks licensed in Ohio
- 61 Less reserves for depreciation (1)
- 62 Others:
- 63
- 64
- 65 Less reserves for depreciation (1)

66 TOTALS OF FIXED ASSETS FEDERAL COLUMNS

67 LESS TOTAL RESERVES FOR DEPRECIATION

68 NET TOTALS FIXED ASSETS

69 PATENTS and COPYRIGHTS—yielding Royalties or other income

70 PATENTS and COPYRIGHTS—not yielding Royalties or other income

71 GOODWILL

72 OTHER ASSETS: (Describe fully; for Ohio columns subdivide per taxing classifications.)

73

74

75

[fol. 37] BEFORE THE BOARD OF TAX APPEALS, DEPARTMENT
OF TAXATION

No. 4441

THE HOOVEN AND ALLISON COMPANY, Appellant,

vs.

WILLIAM S. EVATT, Tax Commissioner of the State of Ohio,
Appellee

Proceedings and Testimony.

Before the Board of Tax Appeals, Department of Taxation,
State Office Building, Columbus, Ohio, on Thursday, April
23rd, 1942

Present: Hon. Hugh S. Jenkins, Chairman; Hon. Robert
M. Hance, Member; Hon. William J. Ford, Member.

APPEARANCES:

Messrs. Thomas C. Lavery, Cincinnati, Ohio, and Marcus
E. McCallister, Xenia, Ohio, on Behalf of the Appellant.

Hon. Thomas J. Herbert, Attorney General, by Aubrey
A. Wendt, Assistant Attorney General, on Behalf of Appel-
lee.

[fol. 38] Thursday Morning Session,
April 23rd, 1942.

Chairman Jenkins: You may proceed.

Mr. Lavery: This is an appeal, if the Court please, from
the action of the Tax Commissioner, Hon. William S. Evatt,
in denying tax exemption to a part of the inventory of The
Hooven and Allison Company, of Xenia, Ohio.

The claim for tax exemption under the Ohio statutes was
based upon a provision in the Constitution of the United
States, which, in general, forbids the taxation by the States
of imports and exports.

The Hooven and Allison Company is engaged in the busi-
ness of manufacturing rope and twine products at Xenia,
and in the course of its manufacturing operations it uses a
great quantity of hemp, sisal, and so on, which is produced
or grown in foreign parts of the world and which is brought

to Xénia in bales—I suppose bales is the proper expression to use for it—and there placed in the warehouse of The Hooven and Allison Company until they are ready to begin the actual processing of the material which finally results in the manufacture of rope and kindred products.

The questions involved in this case are, first, whether or not The Hooven and Allison Company is the importer of the various raw materials used in its manufacturing process, because it is essential, to come within the so-called “Original Package” doctrine which was laid down in the famous *Brown versus Maryland* case of the United States, it is essential that the person claiming immunity being the importer of the subject which the State seeks to tax; and, further, it is essential that the import be in the hands of the importer in the original package at the time the State seeks to levy its tax.

So we have the question as to whether or not The Hooven and Allison Company is the importer of this raw material, and we will show, or attempt to show, that under the course of business by which this raw material is brought to the United States that it is imported by The Hooven and Allison Company.

We will also offer a stipulation which has been signed by counsel for both sides setting forth the amount of the inventory involved which came from foreign sources, and also the value of that inventory, so that there will be no question in this case as to the details of the base of the tax, whether the Board should hold that we are taxable or not. In short, we have agreed as to the amounts involved and as to the sources from which the raw materials come; so that that question will not be before the Board.

There is another question in the case. Some of the raw material which is used by The Hooven and Allison Company is imported from the Philippine Islands, and of course under the usual definition of import it means an article of commerce brought from a foreign country; the question is raised as to whether or not the Philippine Islands are a foreign country so far as the United States is concerned. Of course recent events have greatly changed the complexion and the character and the status of the Philippine Islands, but this case arose before the outbreak of the War, and I suppose for the consideration of the Board and possibly the Court, it should be limited to the

legal status of the Philippine Islands as of the time this controversy arose.

We have two classes of inventory involved; first, smaller classes, that part of it that was brought in from the Philippine Islands, and, second, that part that was brought in from many other countries admittedly foreign to the United States and brought in and stored in the warehouse of The Hooven and Allison Company at Xenia.

Chairman Jenkins: What years are involved?

Mr. Lavery: The years involved are 1938, 1939 and 1940.

Chairman Jenkins: That is the tax years?

Mr. Lavery: The tax years, yes, and then there are two years prior to that time which I think are held open pending the outcome of this appeal.

Chairman Jenkins: Waivers have been filed?

Mr. Lavery: Waivers have been filed, yes, sir, but the two years are open; they are not involved in this appeal; but the determination of this case will decide what the company shall be taxed for.

Mr. Ford: One appeal involving the assessment for each of the three years?

Mr. Lavery: One appeal involving the assessment for each of the three years. We have, of course, a great many transactions involved in the course of bringing in this raw [fol. 41] material from most all over the face of the earth, and in order to simplify the facts, because, as you readily understand, if we attempted to testify as to each one of these transactions it would be an interminable hearing, we have entered into two stipulations, counsel representing the parties. The first one embodies the result of a trip to New York last September where I had conferences with the various brokers with whom The Hooven and Allison Company deals, and after I had talked to these brokers about the course of business involved in their business relations with The Hooven and Allison Company, I came back and sent to each concern a list of questions, asking each office to answer these questions severally and freely as they could.

The Attorney General's office, Mr. Wendt, has agreed to this stipulation to this effect, that the questions listed here were submitted to the witnesses indicated; that the witnesses if they had been called to testify here today would have testified as set forth in the replies to the questions which were asked.

Now at first we thought that we could make some summary statement of these replies without setting forth the exact questions which were submitted, but the way the replies came in it is difficult to set opposite each question the precise answer that was made to it; so, after consultation, we thought it the better procedure to put in the questions as they were asked and then put in the replies as they were received. So this stipulation embodies the questions and the original answers which were made by these various brokers [fol. 42] etc. There were five of them.

Now the other stipulation is, as I have said, merely an agreement as to the countries from which the raw material came and as to the values of such raw materials as they stood on the books of The Hooven and Allison Company in these years which are involved in the appeal.

The replies in the first stipulation set forth in some detail the nature of the course of business between The Hooven and Allison Company and the producers and foreign sellers of the raw material which they produced. The course of business is set forth from the point of view of the brokerage office.

We thought it would also be advisable, and Mr. Wendt went along with us in this suggestion—in fact, I think it was his suggestion—that we have one of the Company's officers here to give the facts as to the course of business from the point of view of The Hooven and Allison Company. So we have Mr. Martin here today to testify as to the nature of the course of business of The Hooven and Allison Company, and we will offer his testimony at the proper time. I don't think it should take very long but Mr. Wendt will probably want to ask him some questions too.

Now, with that outline of the issues of the case, we are ready to proceed unless Mr. Wendt has something to say.

Mr. Wendt: If it please the Board, I think of only one other question that is raised as an issue in this case, and that is, When do imports, is such there be here, cease to be [fol. 43] imports? May an importer, if there be an importer in this case, take steps which would cause those materials that are brought into this country as imports to cease to be imports?

The rule, of course, as expressed by Mr. Lavery, is that an original package once broken is no longer an import but the goods are then mingled with the mass of property in this country. We think there may be other things which

would cause such materials to cease to be imports in Article I, Section 10, of the Federal Constitution, and will probably discuss those later on in brief.

Mr. Ford: Does the stipulation formally show that the duties on the property in question were paid at the ports of entry or the custom offices, or are we to assume that?

Mr. Lavery: The stipulation has embodied in it a number of standard forms of contract which are used by all these brokerage firms; they are essentially all the same.

Chairman Jenkins: Are we to assume then the terms of the contract have been complied with?

Mr. Lavery: No, we will make some showing as to that. As a matter of fact, this contract, as the brokers' replies indicate, has been in use for some time; some of them said for almost one hundred years. We are going to show that in the case of The Hooven and Allison Company at least some of the terms of this contract are not complied with; that is, the course of business is different from that prescribed by the contract.

As to the first question, without stopping to find this in [fol. 44] any particular contract, I think the answer is that the duties are paid, the custom duties, if there are any, are paid by the buyer, but that I will have to bring out.

Mr. Ford: Who do you mean, the buyer? Isn't that probably one of the big points of the case, as to who the buyer is here?

Mr. Lavery: We intend to show that the purchase is made by The Hooven and Allison Company of the goods while they are in foreign countries and from that time on whatever is done is merely for the convenience of transit in getting them to Xenia.

Mr. Ford: Well, somebody is supposed to pay the duties, and my question was whether that was formally shown?

Mr. Lavery: I am sure that is covered here; I am trying to find it.

Mr. Ford: Because, as I recall, some of the Court decisions incorporate that as a condition to the right of immunity.

Mr. Lavery: Perhaps we should wait until we put Mr. Martin on the stand. What was your question, Mr. Chairman?

Chairman Jenkins: My question was, are we to assume the terms of the contract have been complied with?

Mr. Lavery: That we will show; there was some variance from the exact terms of the contract; and I want to say too that I agree with Mr. Wendt's analysis of the problem here, that one of the issues, probably the main issue, is whether or not the so-called Original Package doctrine as laid down in the Brown versus Maryland case applies to this particular kind of a situation; that is, whether the general language used there by the Supreme [fol. 45] Court should be held to cover the situation which we will develop in connection with this case.

Are you ready now?

Chairman Jenkins: Yes.

Mr. Lavery: This is my first appearance before the Board. Do you swear the witnesses?

Chairman Jenkins: Yes.

Mr. Lavery: Mr. Martin, will you take the stand?

Be It Remembered That the Appellant, to maintain the issues on its part to be maintained, introduced and offered in testimony on its behalf the following evidence, to wit:

[fol. 46] E. D. MARTIN, called as a witness, on behalf of the Appellant, being first duly sworn, testified as follows:

Examined by Mr. Lavery:

Q. What is your name?

A. E. D. Martin.

Q. Where do you live, Mr. Martin?

A. Xenia, Ohio.

Q. What is your occupation?

A. General manager and treasurer of The Hooven and Allison Company.

Q. How long have you been employed by The Hooven and Allison Company?

A. Twenty-seven years.

Q. What is the nature of The Hooven and Allison Company; is it a corporation or a partnership?

A. It is a corporation.

Q. When was it organized, Mr. Martin?

A. June, 1888; June 13th, to be exact.

Q. Under the laws of what State?

A. Ohio.

Q. Will you give us a brief account of the nature of the business in which the company is engaged?

A. We are manufacturers of Manila Sisal, hemp, cordage, twines, packing and oakum binder twine and similar products.

Q. That is packing and oakum?

A. Yes.

Q. What kind of raw material is used by The Hooven and Allison Company in its manufacturing operations?

A. Well, principal materials are Manila hemp from the Philippine Islands, and Java sisal from the Dutch East Indies; what is called African sisal from the British and [fol. 47] Portuguese East Africa; Mauritius hemp from the Island of Mauritius; Jute from India, and the soft hems from Italy and the Balkan States and South America. And we use some domestic binders, sisal or Henequen from Mexico and Cuba; and istle from Cuba. Those are the principal things.

Q. Do you ever obtain any of your raw material from sources within the United States?

A. Very rarely. We do, yes, but there isn't much hemp grown in this country and there is really not a large enough field.

Q. Is any of the raw material involved in this case which you obtained from sources within the United States included in the present inventory?

A. None whatsoever.

Q. What is the process by which you obtain this raw material, Mr. Martin? Will you describe the course of business by which you get your raw material from these various places throughout the world?

A. We obtain our material almost altogether from the United States agents of foreign producers. Our principal connections consist of five concerns, R. L. Pritchard & Company; these are all in New York City; Hanson & Orth, James Fyfe, Macleod & Company and Stein, Hall & Company; they are the agents for the Java sisals.

Q. Mr. Martin, will you describe the negotiations between The Hooven and Allison Company and these brokers by which you obtain your raw material?

A. Well, when we are in the market for fiber, we usually contact these agents in New York, or, on the other hand, [fol. 48] they are putting out offers right along on their materials which they communicate to us by telephone or telegraph; usually that way, occasionally by letter. What

happens is that if we want to buy a certain grade of fiber we get in touch with the agent, or several agents sometimes handling the same fiber, to find out what their prices are. If we can't get together on a price we usually make an offer of what we think we want to pay, which they cable out to their principals; it takes about a day; the next day we get a reply. If we are in agreement to make a purchase covering the quantity we want, price, time we want it shipped, quite often the routing of it—we sometimes like to favor certain steamship companies that buy rope from us—if finally those agreements are agreed to, they send us a contract, which usually comes in duplicate, signed by the agent on behalf of the principal, and we sign it and send it back. That is the first step in making the purchase.

As soon as the fiber is ready, and quite often we buy fiber that hasn't even been produced if we want a late shipment, as soon as the fiber is ready we get a declaration, that is usually by mail, by the agent, stating that so many bales of this fiber is on such and such a boat, sailed from Manila or Java on such and such date, and they generally tell us the approximate date of arrival; and about the time the material arrives at the port of entry we receive either further notice or usually a pro forma invoice.

Q. What is a pro forma, Mr. Martin?

A. Well, it gives the approximate tonnage and value of [fol. 49] the shipment; on our part it is not a very essential document; the exact uses that the agent has for it beyond that, I don't know. It is intended to give us—you see, this fiber when it comes in has to be weighed,—any detail, etc. The shipments when they are originally shipped are earmarked on the vessels for us. Pro forma gives us an approximate idea of how the shipment is going to turn out, the exact pounds and the value. The original declaration is a very vague document, saying approximately 500 bales may be in shipment; the pro forma will show the correction of that, 496 bales, for instance.

Q. Now when the goods arrive at the port of entry in the United States, what happens there?

A. Well, when we get the pro forma we are generally requested to give a routing of the material shipped to Xenia. It is brought through the customs and weighed and shipped to us on the ordinary straight bill of lading to Xenia.

Q. By rail?

A. Almost altogether. Occasionally we have a differential route where we ship it down through Norfolk to save a little freight.

Q. Who pays the customs duties, if there are any, or are there any custom duties on the kind of material you bring in?

A. The only material that has a duty is true hemp; there is no duty on these other fibers.

Q. Who arranges for clearing the shipments through customs and arranges for weighing, and so on?

A. That is part of the deal. When we buy, we arrive at [fol. 50] a price which includes the freight, cost at origin, insurance; that is the service that the agent renders us, included in the price, as a matter of convenience; we are located out at Xenia, Ohio, so they do that and it is charged in the cost of the goods.

Mr. Ford: That is, the duties, if any, are charged in the cost?

The Witness: Whenever we buy an item that has a duty on it they will quite often give us a price both ways, if we want to buy that way, but we always buy duty paid; we are located in Xenia; we never go back and pay the duty ourselves.

Q. When you speak of the agents, that is, a part of the agents' services in connection with the deal, you mean by "agents" the brokers with whom you originally negotiated the contract?

A. That is right.

Q. When the goods are put on board cars at the port of entry how are they shipped to Xenia, what kind of shipment document is issued to cover that part of it?

A. You mean the type of bill of lading?

Q. Yes.

A. Straight bill of lading.

Q. Do you have to surrender that bill of lading before you get possession of the goods at Xenia?

A. No, except that—no, in our case that would be a matter between us and the railroad.

Q. When do you pay for the goods, Mr. Martin?

A. Well, when the goods are finally in and weighed and shipped, we get what we call a final invoice; I think on an

[fol. 51] average we pay for the goods immediately after it arrives in Xenia, or within ten or fifteen days, supposed to pay.

Q. Are the goods paid for before they are delivered to you by the carrier?

A. No, sir.

Q. Or afterwards?

A. Never that I can think of.

Q. Make your statement a little clearer, Mr. Martin; are they paid for—let me ask you again, are the goods paid for by you before they are delivered to you by the carrier at Xenia?

A. No, sir; as I stated, we generally pay ten or fifteen days after that.

Q. So that in effect these transactions with you, would you say, are credit sales or not?

Mr. Wendt: Object.

Chairman Jenkins: What is your objection, Mr. Wendt?

Mr. Wendt: That is a matter for the Board to determine, whether they are credit sales, from the facts; that is a conclusion.

Chairman Jenkins: You may answer; objection overruled.

A. Why, certainly they are credit sales.

Q. Now when the goods reach Xenia and they are delivered to you by the carrier, Mr. Martin, what do you do with them at that time?

A. We place them in the raw material warehouse and hold them until they are needed.

Q. How long are they kept in the warehouse usually before they are used? Is there any definite time in which they are kept there?

[fol. 52] A. No; it might be we would need the stuff as soon as it got there and again we might not; it comes from long distances and we do not carry any more inventory than we need to; it takes three to six months for it to get to us; we attempt to keep a backlog for that; we attempt to run our business with a minimum working inventory, of course.

Q. When you take the fiber out of the warehouse do you make a bookkeeping entry to show that it has been removed from the warehouse and charged to some other part of the operation?

A. Certainly; it is removed from the raw material account and charged into processing in the mill; each bale of fiber as it is removed from the raw material warehouse becomes, according to our records, in process. Of course we have to batch and treat this stuff; it may not be used for a couple of days; but as soon as it leaves the warehouse it is charged in process; the usual procedure in any class of goods, I suppose.

Q. You have one record of the inventory in the warehouse and another record of the goods in process and when the goods are taken out of the warehouse and the bales are broken, then there is a charge in process?

A. If they are taken out of the warehouse they are charged in process whether they are opened or not. We have three accounts, the raw materials account, goods in process account and a finished goods account.

Q. Now as to the goods in the raw material account in the warehouse, is any use whatever made of those goods until you are ready to put them in the course of your process [fol. 53] essing?

A. No.

Q. In what condition are those goods in the warehouse? Are they in the original package in which they are brought into the country or are the packages broken?

A. Well, they are in the original package; there might — a bale burst occasionally in transit; outside of that they are in the original package.

Q. Will you describe how they come in; will you describe what is the original package in connection with your business? I mean just a description of what the package is.

A. Well, all fiber comes in bales, ranging 200 to 1000 pounds; for example, Mexican sisal, which does not have to come so far overland, is not compressed so tightly; Java is put up under hydraulic pressure and is very tightly packed; those bales weigh anywhere from five to eight hundred pounds; they are all lashed, some in steel bands, some with fiber bands; they all have a common characteristic, about four feet high by two by three feet.

Q. Are they covered by some kind of a wrapping?

A. Manila fiber is covered by a sort of a reed; sometimes it isn't; the other fibers as a rule have no wrapping.

Q. They are merely bound together with what kind of binding?

A. Fibers lay parallel, the average fiber about three to

four feet long, and it is just packed down with steel bands around it and shipped; it is condensed so that very little can happen to it; there is no special need for covering on it except the Manila fiber.

Q. Are there any markings on these bundles when they come in?

[fol. 54]. A. Oh, yes, they have the grade, little marks put on, presumed, by the natives, marks to identify them with the transaction.

Q. Explain that a little more fully.

A. Well, in some cases in some of the fiber they go to the trouble to mark our order per transaction, on every bale; some they don't. They will use just a blue cross or something like that.

Q. What is the purpose of those markings, would you say?

Mr. Wendt: If you know.

Chairman Jenkins: If he knows.

Q. If you know, yes?

A. I can only suppose it is to identify them.

Mr. Wendt: Objection to what he supposes.

The Witness: That is the question.

Chairman Jenkins: If you know.

The Witness: In some cases because the mark coincides, because we know, we can tell what it is; in other cases I don't know exactly.

Q. Does the mark on the bale identify the shipment with any particular contract?

A. Not in every case but I would say generally where they are marked it is always with the contract tied up.

Q. Are the goods in warehouse inventory ever used as collateral to secure loans?

A. No, we have never used collateral, never used a fiber for that purpose.

Q. Are they included in your balances usually for the purpose of obtaining credit at the banks or other financial institutions?

A. No, sir; our inventory is naturally in our balance sheet, of course, but not for that purpose.

Q. Have you ever used the inventory in the warehouse as security to pay a loan?

A. Not during my time with the company.

Q. How long have you been with the company?

A. Twenty-seven years.

Q. Do you maintain any representatives in New York; do you have an office there or have any employees there?

A. No, sir.

Q. The material in your warehouse inventory, Mr. Martin, does that have to be processed before it is available for use? In short, what do you have to do with this raw material that you get from various countries before you can use it?

A. Well, of course we have to open it and prepare it; we put emulsion material on it and run it through machinery.

Q. Can it be used for any purpose whatever until you have processed it?

A. Not that I know of. I don't quite understand the question. Not that I know of.

Q. What I mean, as raw material is there any use to which you could put it before you begin your processing operation on it?

A. No, sir.

Mr. Ford: And you don't start any processing operations until you take it out of the warehouse, is that correct?

The Witness: That is right.

Mr. Lavery: I think that is all.

[fol. 56] Cross-examination.

By Mr. Wendt:

Q. Has your company had occasion to borrow any moneys during the years 1937, 1938 and 1939?

A. I think during that time we have, yes.

Q. And from whom have you borrowed?

A. Well, our principal bank is the National City Bank of New York City.

Q. Who arranges for those loans?

A. Mr. McCallister as secretary; he sends a note, if we want money we just send a ninety day note and credit it to our account.

Q. You mean there is no previous negotiation?

A. No; we have had for years—we carry our account with them.

Q. So that if your company wants some money you just sign up a company note for the amount you want, make it payable to the New York Bank and put it in an envelope with a letter probably stating the note is enclosed and send it through?

A. Oh, yes.

Q. And they send the money back?

A. Well, they don't send it back; just credit our account.

Q. No previous negotiations or preliminary negotiations?

A. Well, no, I don't know whether that is correct; they know who we are, of course, but on any individual note like that, if we want money we send a note in; that is what happens; to get any individual loan.

Q. Does that bank ask your company to make financial [fol. 57] statements from time to time?

A. I don't recall; we sent them our financial statement, of course.

Q. And what did you show them in that financial statement?

A. We showed them our assets and liabilities.

Q. Included in your assets then would be the raw materials account, would it not?

A. That is right.

Q. That is, the statement would cover the materials you have in your raw material warehouse?

A. Well, our statement includes all inventory, of course.

Q. That is all included in that?

A. That is right.

Q. So far as you know the bank relies upon the statements as one of the factors in inducing them to make the loans to you, is that true?

A. It might be; I don't know what they rely on; I imagine they rely on our reputation as much as anything else; we could sell that inventory the next day after we borrowed, as far as that is concerned.

Q. Well, now, do you ever sell any of it?

A. Any of what?

Q. Do you ever sell any of your raw material in your inventory?

A. I think there may have been two or three transactions in the last two years where they ran out of material and we sold it to them.

Q. So that is inconsequential?

A. Yes.

Q. So that the materials that you have purchased during the years in question have been purchased with the view of manufacturing them into hemp and twine or into rope and twine and your other products, isn't that right?

[fol. 58] A. Yes; we are not speculators; we are manufacturers.

Q. Nor you don't buy with a view of reselling the raw materials, possibly making a profit thereon?

A. No, we try to buy when it is cheap but we never buy fiber we have no use for for conversion.

Q. When you purchase materials that come in from foreign countries who chooses the boat upon which they shall be shipped?

A. Do you mean the boat or the line?

Q. Well, let us have the boat first?

A. Well, I would assume that the shipper at the other end, the principal at the other end, would do that.

Q. Who chooses the line; the steamship company?

A. Well, that is at our option; if we elect for a certain line, which has happened a great many times, they arrange for shipment over that line.

Q. Did you, during the years 1937, 1938 and 1939 choose or elect which line would bring the materials in or did you leave that up to the shippers?

A. Well, we started out, the first thing we did was to stop Japanese shipping and try to get the American flag.

Q. When did you stop Japanese shipping?

A. I would say along in '39; I don't know; it was when the trouble began to brew up.

Q. When you speak of the materials that come from the Philippine Islands, will you tell us from what point they [fol. 59] are shipped?

A. Well, most of it is shipped from Manila.

Q. Any other ports?

A. Mindanao, that section down there; I don't follow through on all those details. After I buy fiber I don't pay any attention to that, to tell the truth; I know in a general way; there might be shipments come from individual ports that I would never pick up.

Q. How do you know when materials arrive in port in this country?

A. Well, there are two things happen; we have, of course, the declaration of the vessel.

Q. And when do you receive that declaration?

A. Well, that comes as soon as it leaves the other port as soon as practical. I understand that that is cable through and then there is mail comes through with further documents that probably beats the shipment in New York.

Q. I believe the question was, how do you know when materials arrive in port in this country?

A. We get the advice from the agents, and of course we take the Journal of Commerce, which gives information on shipping. Mr. Pandaker and my personal secretary watch that; that is just a matter of interest; we may be honestly interested in getting something to Xenia as quick as we can.

Q. Do you have any one go on board the ship and examine the goods and see their condition?

A. No.

Q. Do you know who does that?

A. The agent or the inspector from the other country of [fol. 60] whom we buy; that is part of our contract price for the goods; that is a business expedient; we usually buy on landed terms contract and that is a function they perform in return for us giving them the business.

Q. Isn't it a fact then that the first formal notice that comes to you is a notice stating that the goods are on the dock at the port of entry?

A. The first notice is they have been shipped from point of origin.

Q. The first notice you receive after arrival?

A. Well, it could be—it is a pro forma invoice; there is an informal advice, a letter, we may say "have you heard anything of this vessel; is it coming in on time", etc.; we might get some information by inquiry.

Q. That is before it arrives?

A. That is right.

Q. Let us confine this after the goods have arrived and you receive some oral notice notifying you the goods are in this country and available for you; you do receive some notice, don't you?

A. We get that from the agent.

Q. And what does he tell you in that notice, that the goods are on the dock?

A. Well, the pro forma is about the time the boat docks, expected the 28th, and we probably don't hear anything more unless we are in a hurry for something; we have to

give them the route to ship on and we get an invoice with the weights of the bales and the particulars of the transaction follows.

Q. What is the next instrument you receive after the proforma?

A. Usually the bill of lading.

[fol. 61] Q. Mr. Martin, will you just rather briefly describe your factory lay-out, what buildings you have?

A. Well, we have two separate manufacturing units there in Xenia.

Q. Both in Xenia?

A. Both in Xenia.

Q. How many buildings in each?

A. Well, those are small buildings; there is about six buildings at Xenia there; there are some of them tied into each other. The large mill is a U-shaped building; the raw material warehouse is here (indicating), comes up, say, to here, and then the material goes around this way, and on this end is the finished material.

Q. The witness indicating that the raw material warehouse is at one end of the U and that the materials are taken from the raw material warehouse through the U-shaped building and coming out at the other end of the U; is that correct?

A. That is correct. That is what we call the hard fiber mill; the jute mill is more nearly a square building with a detached warehouse right next to it up a small runway.

Q. Is that the same raw material warehouse that you referred to?

A. No, that is the warehouse for other types of material. Then we have a mill we don't operate any more, that is used exclusively for warehousing, some four or five buildings away.

Q. So there are three buildings being used as warehouses, is that right?

A. Three main buildings; they are subdivided into rooms for insurance aids, of course. I would like to add, in addition to that we have materials stored in outside rented [fol. 62] warehouses at this time in Xenia.

Q. Will you confine your answers inasmuch as possible to the years 1937, 1938 and 1939, and if there are other years,

so indicate; at that time there were three principal warehouses, and was there outside storing at that time too?

A. Not that I recall; I don't believe we did have any outside storage in those years.

Q. Do you make any distinctions as to type of materials stored in these three warehouses?

A. Well, we store in the hard fiber warehouse the fibers that would go through that mill; we store over in the soft fiber warehouse the fibers intended for that mill. The third warehouse, considerably detached, an old manufacturing building, carries surplus.

Q. By "surplus" what do you mean?

A. Stuff we can't get in the other two warehouses.

Q. So there might be some hard and soft fibers and other matters too?

A. Yes, and finished goods.

Q. Any finished goods in the raw material warehouse in with the raw material?

A. No, sir. I mean there the two main raw material warehouses for the two mills. Over in the third building it is a utility proposition and we may have one room filled with finished goods; we are not allowed by insurance to mix the two.

Q. Don't you have a term "spot purchases" or something of that sort?

A. Yes.

Q. What does that mean?

A. A spot purchase means a purchase of material on spot; it is in this country:

[fol. 63] Q. So that occasionally you buy goods in this country, do you?

A. Very rarely.

Q. What would be the nature of these spot purchases?

A. Well the only occasion we would have to buy a spot purchase would be something you were short of and somebody had here, if you wanted to pay a premium for it. It would not be one-tenth of one percent of our inventory ever bought in that manner.

Q. Are there any other materials that you buy in this country other than the ones you have named that came from other countries?

A. We buy some American hemp.

Q. Where do you put the American hemp when that comes in?

A. It goes in the soft fiber warehouse; it is a soft fiber.

Q. Do you buy any other materials in this country other than the fibers that you use?

A. Oh, yes, we buy large quantities of oil and tars and repair materials.

Q. What happens to the oil and tar when that comes in?

A. It is placed in tanks, underground tanks, for use.

Q. The tar is fluid, is it, so you can pump it in and out of a tank?

A. Oh, yes.

Q. Any other materials that you buy in this country?

A. Well, any accessory we would need to run our business; those are the principal items. We buy fuel oil and coal to run our power plant, and those sort of things.

Q. I believe you stated that when goods are taken from the raw material warehouse that you make a bookkeeping entry showing the transfer from there to the goods in process account?

A. That is correct.

Q. What is the purpose of that?

A. The purpose of it is to charge it in to the goods in process and keep our cost for doing business; whenever a bale is removed from the warehouse into the mill there is a report made each day by the foreman of that department of the receipts in the warehouse, and that is charged to him.

Q. So that from a bookkeeping or auditing standpoint your company is able to tell how much you have in raw materials, how much in goods in process and how much finished, isn't that true?

A. That is right; and immediately a bale becomes process, it is more valuable, more labor put on it; it is a different type entirely.

Q. You make the same entry with respect to the oil and tar, do you not?

A. Exactly.

Mr. Wendt: I think I have covered everything there. That is all.

Chairman Jenkins: Do I understand you are through, Mr. Lavery?

Mr. Lavery: If Your Honor please, I would like to refer to this stipulation again. Perhaps we ought to number this for the purpose of the record Stipulation No. 1, and the other one, the short one, Stipulation No. 2, if that is agree-

able to the Board, so that the reporter can identify the two. I don't believe, as a matter of fact, we have offered them so far.

Chairman Jenkins: Not yet.

[fol. 65] Mr. Lavery: And I should like to present them to the Board for filing.

Mr. Ford: All right.

Mr. Lavery: I think the members are acquainted now with what they contain. I would like to ask Mr. Martin one or two questions about the contracts that are made a part of the stipulations.

And thereupon the Stipulations above referred to are offered, introduced and admitted in evidence, on behalf of the Appellant, and are hereto attached, marked respectively Appellant's Exhibits Nos. 1 and 2, and made parts hereof.

Re-direct examination.

By Mr. Lavery:

Q. In Stipulation No. 1 there is included a number of standard forms of contract which the brokers use in selling these various kinds of hemp, and so on. Now calling your attention, Mr. Martin, to the form of contract submitted by James Fyfe, covering Java fiber, the sixth paragraph provides: "Terms: Payment in New York funds on delivery on dock at destination." In your contracts is that term of the agreement carried out?

Mr. Wendt: I object.

Mr. Ford: What is your objection?

Mr. Wendt: For the purpose of the record we have provided in the stipulations that I may object to any of the questions. The facts stated are true, but I have a right to [fol. 66] object to that. We come now to the question of a written contract being here altered by the testimony of this witness, showing that the contract they have made is not lived up to in some of these forms. I don't think the witness should be permitted to testify the terms of the written contract are not the terms of the contract unless he is able to show that there was a subsequent contract made which would alter those terms. We are attempting to show by parol evidence the terms of the contract were altered.

Mr. Ford: There might be some point to your objection if this was a case between the parties, but here the State of

Ohio is a party and a contract between parties is not binding upon the State one way or the other; it is not binding upon the State, and, again, the State cannot take advantage of the binding nature of the contract.

Mr. Lavery: I brought in the Bowman case with which you undoubtedly are familiar, which holds exactly as you stated.

Mr. Wendt: I will withdraw the objection.

Q. I will ask the question again, Mr. Martin; do you in your dealings with the brokers mentioned in the stipulation pay for the goods which you buy from them when the goods are delivered on the dock at destination?

A. Never.

Q. As far as you know, have such brokers ever delivered the goods bought from store maintained in this country?

Mr. Ford: I don't believe I understand that question.

[fol. 67] Mr. Lavery: Term 8 of the contract provides that the seller may make equivalent delivery from ship or store at seller's option; that is, he may deliver from a stock in this country or he may deliver from goods brought in on board ship.

Q. In your dealings with these brokers, as far as you know, have they ever delivered any goods to you from store?

A. We never had that occasion.

Mr. Ford: You mean goods already in this country?

Mr. Lavery: Goods already in this country at the time of contract.

The Witness: That has never happened on our contracts to my knowledge.

Q. Is the course of business which you have described the course of business generally followed, or is the course of business which you have described the one you follow without exception?

A. Well, that is our regular course of business here and it is also the course of business I think of the industry. You mean my testimony here today?

Q. That is right.

A. That is the normal course of our business and I feel reasonably sure it is the usual method that they all follow.

[fol. 68] Re-cross examination.

By Mr. Wendt:

Q. Mr. Martin, when you pay for the materials to whom do you issue your check?

A. They are usually sent to the agent at New York.

Q. That is the broker?

A. Yes.

Q. With whom you have dealt?

A. Yes.

Q. Are there any exceptions to that?

A. Well, I never have anything to do with sending those checks. Not that I know of. There might be some exception but I have no information of any that I can think of now.

Q. Do you have any personal knowledge as to where the broker does obtain these goods; could he not obtain them from a store or supply in this country and send them over?

A. Well, I would say that each contract there is enough papers that could only occur with misrepresentation on the papers we receive I should say. We are advised the minute the boat leaves; we never make a transaction in fiber until we determine when we want the material and the grade and all that. What happens is that all that is then put up in this contract. Now, so far as I know, none of our people would ever ship a bale of hemp to this country unless we gave them an order for it or some other mill did. I have never known them to own any. Sometimes a mill may go wrong or some mill not take something, which accounts for spot purchases; one thing, this material, when it is over, [fol. 69] we may elect to sell it; it just so happens we don't, but if we did, that is what we would do; that would be our privilege.

Q. Aren't you primarily concerned with the type of material, the quantity, the date of delivery and its quality?

A. I would say that would be the primary concern, yes.

Q. You aren't so much concerned with where the broker gets that, whether he gets it from a ship or a warehouse, are you?

A. No, assuming that there are certain marks; as a matter of common practice you can't get the material except from these foreign countries; if you want a Soeke Mandi—I don't know how to spell it—S-O-e-k-e M-a-n-d-i—that is the name of the Soeke Mandi Estates,—

Q. We will stipulate that is the way to spell it.

A. (Continuing) You have to go to their agent and arrange for it. The spot situation covers a very small amount; there are certain brokers who may probably buy for their own account and deal in spot hemp but we don't buy that way. It would be just an accident if we did, because the price is usually higher and we generally see that we have supplies coming.

Mr. Wendt: That is all.

Mr. Lavery: I would like to make one further statement, if I may. Mr. Wendt and I have talked over this matter and we have thought for the convenience of the Board it might be advisable to suggest that after this transcript is available that we try to get together and agree upon a statement of facts in the case. I don't know whether that [fol. 70] sort of procedure is ever adopted by this Board or not; but wading through this stipulation and through this record we thought perhaps we could save the time and labor of the Board if we first did that.

Chairman Jenkins: We have had worse mixed-up matters than that and we don't mind it at all.

Mr. Lavery: Then I will withdraw that statement.

Chairman Jenkins: Are you through?

Mr. Lavery: Yes.

Chairman Jenkins: Are you through, Mr. Wendt?

Mr. Wendt: Yes.

Chairman Jenkins: Do I understand you to say that it is only in very rare instances that any of your raw materials are purchased spot?

The Witness: I don't believe we have bought ten cars of spot hemp in the last twenty years.

Chairman Jenkins: Now these firms with which you deal—

The Witness: Could I say one thing there?

Chairman Jenkins: Yes.

The Witness: Of course domestic fiber is not involved in this case.

Chairman Jenkins: That was my understanding.

The Witness: Spot is foreign fiber that happens to be brought in here by a speculator or accident and gets on the market.

Chairman Jenkins: Are these firms with which you do [fol. 71] business, by that I mean are they foreign concerns or corporations operating outside of this country and having agents here?

A. Their status is this, they are usually partnerships—why, I don't know—but they are the agents for—Stein-Hall, for instance, is the agent for H. V. A., practically the Netherlands Government; that is the initials of a very long name, who are the big T sisal, the biggest exporters from the Dutch East Indies, practically a subsidiary of the Netherlands Government, I would say. In turn, Stein-Hall export things from this country. Hanson & Orth in turn are agents for Soeke Mandi. They are partnerships in this country, as far as that is concerned, American Companies, if that was your question.

Chairman Jenkins: That was my question.

The Witness: Yes.

Chairman Jenkins: When you submit an offer to these agents, so-called, in New York, is the confirmation from the agent or from the principal?

The Witness: No, it is all from the agent, who is the principal in this country; he is their agent; what happens, if we submit an offer it is cabled out; we usually receive from Stein-Hall "We have received confirmation of your offer", or maybe it will be a counter-offer, and sometimes we dabble around over as much as one-sixteenth of a cent when you are running into hundreds of tons of it; so really our negotiations with our five principal people are quite informal; very often make a deal over the telephone; it is a matter of mutual trust and confidence over a long time. [fol. 72] Chairman Jenkins: Then all your negotiations are carried out with their agents in New York?

The Witness: Yes. Principals will sometimes make a visit. We have an occasion where one of the principals was here from the Dutch East Indies talking over things and made a deal with him; the agent was there too—just a courtesy order, and happened to be a big one, a thousand tons of stuff. But the reason for the agents is they understand things here and those are big distances and quite often transactions have to be consummated quickly. The market may shift. It is so sensitive that if we make a bid or offer something at two o'clock and call back at three, unless they want to do it, it is gone.

Chairman Jenkins: Now this invoice that has come to you, is that from the agent?

The Witness: That is right.

Chairman Jenkins: From the agent?

The Witness: Yes, this contract, when it is signed, and I think the invoice also, says on there that he is the agent for so-and-so in this transaction.

Chairman Jenkins: Now the checks, when they are mailed to the agent, are they made payable to the agent or the principal?

The Witness: If I may I would like to ask the auditor. I think he signed some of those checks; I don't know—supposed to be.

Chairman Jenkins: To the agent?

The Witness: To the agent. Are any of them made to the bank?

[fol. 73] The Auditor: No, all to the agent.

The Witness: The agent carries practically the complete function of the principal except he cannot sell anything until he gets confirmation. Occasionally he will have an offer come in "You may sell 500 tons today at such and such a price", and that is good for one day, get a blanket authority for one day to dispose of the material; in that case no confirmation is necessary; and if we are interested we will advise of that, and I suppose three-fourths of this stuff goes out by telephone.

Mr. Ford: This is on the record and directed to counsel on both sides. Do I understand that it is agreed in this case that the property in question here as inventoried was all in the warehouse or warehouses of the company on the respective tax dates in question as distinguished from the processing department of the company?

Mr. Lavery: The stipulation reads this way: "It is agreed by and between counsel for the respective parties to this proceeding that the tangible personal property in appellant's inventory in the original packages in which such property was imported into the United States from countries other than the Philippine Islands and from the Philippine Islands during the taxable years 1938, 1939 and 1940, came from the sources and had the value herein set forth."

Now that is the goods packaged in the original packages in which said property was imported into the United States, we have agreed what it was and where it came from and that it was in the warehouse.

[fol. 74] Mr. Ford: My particular question is, is the company claiming immunity with respect to any property in the original package that has been taken from the warehouse into the processing?

Mr. Lavery: No, we are not claiming any tax exemption for that at all; only that remaining in the warehouse in the original package.

Mr. Ford: Is that agreed?

Mr. Wendt: Yes, that is my understanding.

Mr. Ford: You have stated in the ordinary course of your business your dealing is with the agent rather than the principal represented by that agent?

The Witness: That is right.

Mr. Ford: But of course when you deal with a particular agent in New York City with respect to the purchase of a particular commodity you personally know the name of the principal who is going to deliver the commodity in the first instance?

The Witness: Almost invariably, the grade and the estate—they are mostly estates over there—the name of the estate that supplies the fiber is stipulated in the purchase. In the case of Manila fiber there is some 34 grades and there is packers, it all goes by names; S. F. A. and MacLeod Companies of Manila, it is called the Mack Brand.

Mr. Ford: If you can understand, the question I asked you, how is the price fixed, the amount that you are to pay on a particular order, how is that fixed with respect to [fol. 75] the point of delivery, as to whether it is, let us say, f. o. b. New York, the port of entry, or f. o. b., let us say, Xenia?

The Witness: Well, in our case it is always bought f. o. b. port; some of the brokers quote a delivery price to Xenia if you want it; we don't deal that way. The price includes, as a practical matter, what we call and have arrived at by long dealing, a landed price, incorporate what they want for the hemp at origin, plus normal ocean freight and insurance, and the clearance through the customs. Now we carry beyond that increased value insurance, something that we pay five cents a pound for; if it goes down on the ship it is worth ten; that costs us extra; war risk insurance included in the original fixed price or the normal known cost, ocean freight, standard insurance and the cost to the agent here or his help, inspecting the bales, laying it in and preparing it; we arrived that way at a price of six cents a pound for — sisal; it includes premium insurance up to one-half of one per cent. Now if the insurance goes up or the freight rate goes up or down on your contract, the price shifts on those things. War insurance has gone

up to 25 percent on jute right now; we have only got three or four contracts for jute right now, but we will have to pay a premium to cover that. So the landed term price covers the usual things, what they want for the hemp at the other side, plus the known freight and known insurance and the price to get in, that is perfectly agreeable and understood between us, and incorporates those things; then the variances are for our account; if freight goes up, we have [fol. 76] to pay it; if it goes down we get the benefit of it.

Mr. Ford: Well, included on the check for a particular order, which check I understand is in all cases made payable to the agent rather than the principal, is included the freight rate in all cases?

The Witness: That is right, it is a landed price.

Mr. Ford: Landed price. I am talking about freight, where I also include railroad freight.

The Witness: No railroad freight in there.

Mr. Ford: Is that a separate matter between you and the—

The Witness: It is all shipped to Xenia in the normal manner.

Mr. Ford: That goes and is paid direct to the railroad company?

The Witness: Yes. We agree on a price and time and condition and quality on material landed, we will say, New York City; quite often we specify Baltimore because it is two cents less freight to Xenia from Baltimore; we use that a great deal but the steamships won't promise to go there. Our deal with the seller is to get that material landed to a port of entry and cleared through and then it is turned over to us. I want to correct one thing; you have asked if the check included everything. I want to ask about insurance. Do we sometimes issue extra check on war insurance?

The Auditor: Yes.

The Witness: They do those things for us; we can't be [fol. 77] running down there every time a ship comes in.

Mr. Ford: One more question. You have stated, as I recall, that no representative of your company goes down to New York or any other port of entry to examine the goods to see whether they measure up to requirements with respect to quality or otherwise?

The Witness: No, the agent does that for us and we inspect them again in Xenia.

Mr. Ford: Now suppose when it gets to Xenia you inspect it and find that the goods are so inferior that you do not feel you are required to accept the goods under your contract, what do you do about it?

A. Well, we put in a claim in that case and it is usually worked out by arbitration as to what was fair; we never received anything that wasn't fit to use.

Mr. Ford: Under your course of business what would you say as to your understood rights between you and the agent and also between you and the principal as to your right to reject at Xenia if you find that the goods were so inferior that you could not use them?

The Witness: Well, that has never come up.

Mr. Lavery: May I say a word there off the record? All these contracts have an arbitration provision.

The Witness: What would happen then, they would select some neutral importer, and we would, and we would go to arbitration; there is an arbitration clause in the contract. I have never known of but one occasion in recent years [fol. 78] where the material did not prove good and they gave us an adjustment of price and they disposed of it.

Mr. Ford: Do you have any right under your contract to reject absolutely and not use it and not pay for the goods?

The Witness: Well, if it was bad enough we wouldn't probably pay for the goods; I don't know what kind of a lawsuit that would bring about but it would probably result in our having no dealings with them.

Mr. Ford: In the course of business and the contract both together, as to whether you would have a right to reject the goods absolutely or whether you would be permitted to claim over against the agent?

The Witness: Well, I would say if we couldn't get together we would probably have to resort to the arbitration clause; as a matter of actual fact we had that happen on some far; of course that wasn't imported.

Mr. Ford: What as to the course of business, which has been going on with these agents for many years?

The Witness: That is correct.

Mr. Ford: When do you consider that the property is yours for the first time?

Mr. Wendt: Object.

Mr. Ford: Save your exception.

The Witness: Well, we are certainly responsible for it the minute we make a contract for it.

[fol. 79] Mr. Ford: When do you figure that the title to the property is yours so you can use it in making ropes and other cordage, and what-not?

The Witness: Well, I would say the minute it is shipped, I think we have a perfect right; we can re-sell it on the high seas if we want to.

Mr. Lavery: What do you mean by that, Mr. Martin; shipped when?

The Witness: Put on board a vessel; the original owner has parted company with it; I would say it is on its way to us and our goods, as near as I can determine.

Mr. Ford: But it is sold f.o.b. New York?

The Witness: That is right. That is a custom that has gone on for a long number of years; it is largely a matter of convenience; otherwise, if it wasn't for that, I don't suppose these agents would stay in business; if we had to buy c.i.f. there would not be much excuse for them.

Mr. Ford: What do you mean by c.i.f.?

The Witness: That means; cost, insurance and freight from the other end; the minute it is on a boat we assume cost, insurance and freight; this is practically the same as c.i.f., except it has been the excuse for these agents to serve a purpose for us as a go-between.

Chairman Jenkins: Well, then, Mr. Martin, if what you say is true, title you mean would pass the minute it is on the boat?

[fol. 80] Mr. Wendt: Object.

Chairman Jenkins: Save your exception.

The Witness: I didn't understand that. It seems to me we have the control of it, and the only people; the agent certainly couldn't resell it.

Chairman Jenkins: You said the agent inspected the bales?

The Witness: That is right.

Chairman Jenkins: And took an actual invoice of it on the dock, say at Baltimore or New York?

The Witness: That is right.

Chairman Jenkins: In that capacity are they still working for the principal or for you?

The Witness: Well, I would say that is really a service for us in a way in return for getting the order. They are, of course, agents for the principal, but our understanding on the landed terms is that they will do these things for us, included in the price quoted them.

Chairman Jenkins: So that actually you are paying a fee for the service but it is included in the price?

The Witness: That is exactly so, and it is so understood by me and I am sure by the agents.

Mr. Ford: You have spoken of this agent as a go-between; as I understand that, a go-between between principal or agent at Manila on the one hand and your company on the other?

The Witness: Yes, that might be an unfortunate expression, "go-between".

[fol. 81] Mr. Ford: I would infer from that that the agents in New York would be your agents as well as the agent for the principal in Java or Manila, as the case might be?

The Witness: I don't think he is in any sense our agent.

Chairman Jenkins: Does he look to you at any time for his compensation?

The Witness: Well, that is all included in the price.

Mr. Lavery: Do you pay him as an employe of your company?

Chairman Jenkins: No, as his agent.

The Witness: It is perfectly understood when we make the contract that he is going to do these things, inspect it and weigh it in and it is in the understanding of purchase that he does that.

Mr. Ford: Where does this agent get his compensation?

The Witness: I think he gets a commission from the other side on everything he sells.

Mr. Ford: You mean he gets it from them?

The Witness: How he gets it I don't know; they work on commission.

Mr. Ford: But you don't pay him any commission?

The Witness: No.

Mr. Ford: Do you pay him any special compensation for special services rendered at any time?

The Witness: No.

[fol. 82] Chairman Jenkins: Do you have any questions, Mr. Hance?

Mr. Lavery: May I ask him one more question? While the contract provides that the price is payable f.o.b. New York, you have already testified, haven't you, Mr. Martin, that in your case the price is paid after the goods is delivered to you at Xenia?

The Witness: That is correct. Well, as far as that feature is concerned—a sales slip in a department store says you can't return anything without that slip, but you do:

and this contract is very old; it covers certain terms and is a protection, I suppose, against dishonest purchasers, etc.; but I am frank, I haven't read one over for a long, long time until Mr. Lavery got me in on this.

Chairman Jenkins: That is all, Mr. Martin.

Have you offered these stipulations?

Mr. Lavery: I offer the stipulation marked Exhibit No. 1 and ask that it be made a part of the record in this case.

I also offer Exhibit No. 2 for inclusion in the record of this case.

Chairman Jenkins: They may be received.

And thereupon the Stipulations above offered were admitted in evidence on behalf of the Appellant and are hereto attached, marked respectively Appellant's Exhibits Nos. 1 and 2, and made parts hereof.

[fol. 83] And thereupon the appellant rested.

And thereupon the appellee rested.

And the foregoing was all of the evidence offered, introduced and admitted on behalf of the appellant and on behalf of the appellee on this hearing of this matter.

Mr. Lavery: When we get this transcript we have ten days to file a brief?

Chairman Jenkins: Yes.

Mr. Lavery: And then Mr. Wendt has ten days after mine?

Chairman Jenkins: That is correct.

Chairman Jenkins: The case is submitted.

[fol. 84] • APPELLANT'S EXHIBIT No. 1

Department of Taxation, Board of Tax Appeals

No. 4441

THE HOCVEN AND ALLISON COMPANY, Xenia, Ohio, Appellant,

v.

WILLIAM S. EVATT, Tax Commissioner, Columbus, Ohio,
Appellee

STIPULATION

It is agreed by and between counsel for the parties to this proceeding that the following statements may be considered as true for the purposes of this action, with the

reservation, however, to counsel for each side of the right to object to any statement or item hereinafter set forth on the grounds of irrelevancy or incompetency, and of the further right to each of the parties hereto to proffer such additional testimony as may be by him deemed competent.

The following questions have been submitted to the witnesses indicated and such witnesses, if called, would testify as set forth in the replies to such questions:

1. Who initiates the preliminary negotiations between the Hooven and Allison Company and your firm, Hooven and Allison or you?

2. How are the preliminary negotiations initiated: (a) Do you make an offer to Hooven and Allison? (b) Do they make an inquiry of you?

3. How are the preliminary negotiations brought to a conclusion?

4. Is the contract between Hooven and Allison and you a standard form?

5. Is the contract prepared by Hooven and Allison or by you?

6. If prepared by your office, is the contract formally accepted by Hooven and Allison?

7. Do you act as agent for a foreign seller in making the contract? Does the contract indicate on its face that you [fol. 85] are acting as agent for such seller? If so, what language is used so as to indicate your representative capacity?

8. At the time the contract is entered into, where are the goods constituting its subject-matter actually located: In the United States or in a foreign country?

9. Who pays you your commission?

10. How and when is the seller notified of the execution of the contract?

11. What steps are taken by the seller to appropriate the goods to a particular contract?

(a) Are the goods earmarked in any way for Hooven and Allison?

(b) When the goods are loaded on the vessel for shipment from the foreign country to the United States, to whom are they consigned? (1) to Hooven and Allison? (2) To your firm? (3) To a bank, notify Hooven and Allison, or your firm? (4) Is a draft attached to the marine bill of lading? (5) Does Hooven and Allison furnish a letter of credit to a New York bank? (6) To what extent if any are C. I. F. contracts used in your dealings with Hooven and Allison?

12. When the goods arrive at an American port, who clears them through the customs?

13. Who arranges for their transshipment to Hooven and Allison at Xenia?

14. Who pays the cost, if any, of this service?

15. Under what form of bill of lading, order or straight, are the goods shipped from the port of entry to Xenia?

16. Does the seller either in the marine bill of lading or the railroad bill of lading reserve any power of disposition over the goods?

17. Could the seller divert the shipment at any time after the goods are loaded on board ship without liability to Hooven and Allison?

[fol. 86] 18. When is Hooven and Allison required to pay the price: (a) When the goods are put on board the vessel?

(b) When shipping documents are presented? (c) When the goods are delivered on dock at destination (port of entry)? (d) After the goods have been delivered to Hooven and Allison at Xenia and upon receipt of invoice? (e) Is the sale to Hooven and Allison in effect a credit sale?

19. What is the declaration? (a) What purpose does it serve? (b) Does the declaration indicate what contract the goods are shipped to fulfill? (c) What is the "proforma" and what purpose does it serve?

20. What is the invoice? (a) What purpose does it serve?

21. Who insures the goods against risk of loss during the transit?

22. Who pays for the insurance?

23. Who is the beneficiary of the policy?

24. Who arranges for the increased value and war risk insurance? (a) Who pays for it? (b) Who is the beneficiary?

25. Who pays the wharfage, port dues, toll, or other charges of a similar nature at the port of discharge?

26. Does the standard form of contract provide for "payment in New York funds on delivery on dock at destination, title to remain in seller until goods are fully paid for" in sales to Hooven and Allison? If so, does Hooven and Allison in fact pay when goods are delivered on dock at destination, or only upon receipt of invoice after goods are delivered to Hooven and Allison at Xenia, Ohio?

27. Does the standard form of contract provide for "equivalent delivery from ship or store" at seller's option? (a) Are goods sold to Hooven and Allison ever delivered from store? (b) If so, under what circumstances?

28. Where the terms of the contract and the course of business under it are inconsistent, how can the discrepancy be explained?

[fol. 87] 29. Has there ever been a loss at sea of goods sold to Hooven and Allison?

30. With the entire course of business in view, who in your opinion is the importer of the goods sold by you as agent of a foreign seller to Hooven and Allison? Explain fully.

31. Please furnish standard forms of contract used by you in your dealings with Hooven and Allison.

It is further stipulated that questions heretofore set forth were submitted to brokers from whom the Hooven and Allison Company purchased fibre, sisal, hemp, etc., as follows:

R. L. Pritchard & Company, 90-96 Wall Street, New York, New York

MacLeod & Company, Inc., 60 Beaver Street, New York, New York

Stein, Hall & Company, Inc., 285 Madison Avenue,
 New York, New York
 James Fyfe, 44 Whitehall Street, New York, N. Y.
 Hanson & Orth, 41 East 42d Street, New York, N. Y.

It is further stipulated that the exhibits attached hereto are the original replies of the brokers heretofore named to the questions hereinbefore set forth, as follows:

Exhibit "A": the reply of R. L. Pritchard & Company.

Exhibit "B": the reply of MacLeod & Company.

Exhibit "C": the reply of James Fyfe.

Exhibit "D": the reply of Stein, Hall & Company.

Exhibit "E": the reply of Hanson & Orth.

It is further stipulated that the forms of contract attached to each exhibit are those submitted by each broker in response to question 31 hereinbefore set forth.

Respectfully submitted; Thomas C. Lavery, Attorney for Appellant; Thomas J. Herbert, Attorney for Appellee, Attorney General; Aubrey A. Wendt, Assistant Attorney General.

[fol. 88]

Copy

EXHIBIT "A" TO STIPULATION

R. L. Pritchard & Co., 90-96 Wall Street, Fibre Brokers
 New York, September 19, 1941.

Mr. T. C. Lavery, Campus Station, Cincinnati, Ohio.

DEAR MR. LAVERY:

We have your letter of 13th instant in regard to our business with Hooven & Allison Company, Xenia, Ohio.

Some of our business with H & A is on a purely brokerage basis. In other words, we are the medium of business in several fibres between the New York representatives of various shippers and H & A, and in such cases our duties are completed when the contracts are exchanged between buyer and seller. In the following remarks we are not referring to such business, nor do we refer to occasional transactions we ourselves have with H & A in spot goods,

meaning goods which are purchased by H & A ex store or ex dock at points within this country.

Our remarks, therefore, apply to transactions between H & A and shippers of foreign goods for whom we act as Agents, chiefly Jute and to a smaller extent other fibres.

The preliminary negotiations are usually initiated by an inquiry from H & A for certain grades in which they may be interested. As we know what they use, we may make them an offer without receiving an inquiry, if we have something which we think will interest them. These negotiations will result in a price being agreed upon and we cable to our shippers that H & A have bought the lot.

We prepare a contract in triplicate on a standard form as between our shippers and H & A and we sign same as Agents for the shipper. H & A retain one copy of this contract and accept the other which we retain here, sending the third copy of same to the foreign shipper. These contracts are accepted by us "As Agents for . . ." (the foreign shipper). The exception to this is that contracts for Benares Sunn Hemp would be as between H & A and ourselves, but all other details of such transactions are in accord with other fibres.

Such contracts are entered into at the time the goods are located in a foreign country unless, as rarely happens, they have already been shipped by the foreign consignor for sale in this country.

Our commission is paid by the foreign seller whom we represent.

When the goods are shipped from origin, we receive a cable advising such shipment which we pass on to H & A.

The goods are not specifically marked as belonging to H & A but the mark on the goods which signifies the quality has in practically all cases been specified when the transaction is made. Very occasionally a grade instead of a mark is sold which would give the seller the option of shipping any mark which would conform with the quality of the grade sold.

[fol. 89] The goods are usually consigned by the shipper to the order of a Bank, notify H & A and ourselves. The draft would be drawn on a Bank with documents attached. H & A do not furnish a Letter of Credit. In the case of Jute this is done by us and the cost of same is included in the price paid by H & A. H & A do not buy C.i.f. but landed at port in the United States.

When the goods arrive at an American port the documents are handed to us by the Bank for the purpose of making customhouse entry and delivery. As a matter of service to H & A, the transshipment from port of arrival to Xenia is arranged by ourselves, H & A instructing us the route by which they wish the goods forwarded and, of course, paying the freight from port of arrival to Xenia.

The foreign shipper does not reserve any power of disposition over the goods after documents are handed to the negotiating Bank at port of origin.

The contract calls for payment by H & A on delivery of the goods on dock at port of entry in U. S. A. These terms are in practice modified to the extent that payment is not made until the goods are weighed on the dock and invoice received by H & A.

You ask for the meaning of the word "declaration". This means in our trade advice that a shipment has been made from the foreign port by a certain steamer for port of destination in U. S. A. The purpose is to inform the buyer when he may expect the goods to arrive in this country. The invoice serves the purpose of advising the buyer just how much he must pay for the goods and is based on the landed dock weights figured at the contract price. We do not use a "pro forma" invoice.

In the case of shipment from Calcutta, the insurance is covered and the premium paid by us, the cost of same being included in the price paid by H & A, except that, owing to the impossibility of estimating at time of sale the cost of coverage against war risk while on the voyage, the buyer agrees in his contract to pay the cost of war risk in excess of 1/2% of the insured value.

In the case of African Sisal, the insurance is usually covered by the seller and he or his assignees would be the beneficiary.

In case of loss at sea, we would be the beneficiaries under the policy, for the reason that, to facilitate the transaction, we had opened credits in favor of the seller.

Wharfage, port dues, toll would be paid by H & A if incurred, but they are not incurred.

The standard form of contract provides for payment in New York funds on delivery on dock at destination, title to remain in seller until goods are fully paid for. As already stated, these terms of payment are not strictly enforced by sellers when the buyer is sound and responsible.

[fol. 90] "Equivalent delivery from ship or store" is permitted by the contract, but we cannot recollect that this has ever occurred in our transactions with H & A.

If there should be any discrepancy between the terms of the contract and the actual carrying out of the transaction, we should say that it might be due to the mutual confidence which exists as to the integrity of the buyer and seller.

We cannot recollect that any goods sold through our medium to H & A have been lost at sea.

In our opinion H & A are the importers. The entire movement of the goods from first to last is the result of the order placed by H & A.

Yours very truly, (signed) R. L. Pritchard.

RLP:E.

Here Follows 4 Photolithographs, Side Folios 91-94)

MANILA CONTRACT

NEW YORK,

1. SOLD BY:

2. TO:

3. QUANTITY: About

(5% more or less)

4. PRODUCT:

5. PRICE: cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. TERMS: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. SHIPMENT: At port or ports in Philippine Islands during Direct or indirect, with or without trans-shipment for the port of The goods to be shipped sound and in good order and to be taken by buyer as discharged. herein called destination.

8. Equivalent delivery from ship or store at seller's option.

9. WEIGHTS: Actual weight, less four pounds per bale tare.

10. (a) If before shipment of all the goods hereunder the rates of freight to point of destination are increased by reason of the cancellation, suspension or change of tariff as a result of, the imminence of war, or of war, or of governmental measures or interference, such increase in freight rate shall be for the account of the buyer. If for any reason during the life of this contract, but before shipment of all the goods hereunder, freight rates shall decline, the buyer is to receive the benefit thereof.

The rate of ocean freight at the date of this contract is _____

(b) Where the price includes the cost of transportation from port of arrival to an interior point any change in the cost of said transportation will be for buyer's account.

11. QUALITY: If inferior thereto buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of this contract for fibres in similar positions. Damaged, if any, to be taken by buyers at a fair allowance.

12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. Any premium for war risk insurance to be for buyer's account.

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obliged to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.

18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.

Any dispute arising out of this contract or its interpretation shall be settled by arbitration in

5. **PRICE:** cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.
6. **TERMS:** Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. **SHIPMENT:** At port or ports in Philippine Islands during Direct or indirect, with or without trans-shipment for the port of The goods to be shipped sound and in good order and to be taken by buyer as discharged. herein called destination.
8. **Equivalent delivery from ship or store at seller's option.**
9. **WEIGHTS:** Actual weight, less four pounds per bale tare.
10. (a) If before shipment of all the goods hereunder the rates of freight to point of destination are increased by reason of the cancellation, suspension or change of tariff as a result of, the imminence of war, or of war, or of governmental measures or interference, such increase in freight rate shall be for the account of the buyer. If for any reason during the life of this contract, but before shipment of all the goods hereunder, freight rates shall decline, the buyer is to receive the benefit thereof. The rate of ocean freight at the date of this contract is _____.
- (b) Where the price includes the cost of transportation from port of arrival to an interior point any change in the cost of said transportation will be for buyer's account.
11. **QUALITY:** to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference, for various grades is to be taken as existing at the time of this contract for fibres in similar positions. Damaged, if any, to be taken by buyers at a fair allowance. If inferior thereto buyers are
12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. Any premium for war risk insurance to be for buyer's account.
16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obliged to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. **ARBITRATION:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is allowed more than the amount which said seller may have offered said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

ACCEPTED:—

ACCEPTED:—

BROKERS.

SELLER

BUYER

FIBRE CONTRACT

NEW YORK.

1. SOLD BY:
2. TO:
3. QUANTITY: About (5% more or less)
4. PRODUCT:
5. PRICE: cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.
6. TERMS: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. SHIPMENT: Direct or indirect, with or without trans-shipment for the port of The goods to be shipped sound and in good order and to be taken by buyer as discharged: herein called destination.
8. Equivalent delivery from ship or store at seller's option.
9. WEIGHTS:
- 10a. In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof.
- 10b. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.
11. QUALITY: buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within twenty days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damage, if any, to be taken by buyer at a fair allowance. If inferior thereto
12. In the event that the carrier, for reasons beyond its control, discharges the goods at a place other than destination, in accordance with its bill of lading, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. WAR RISK INSURANCE: Any premium for war risk to be for buyer's account.
16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. ARBITRATION: Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner.

5. **PRICE:**
cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free) any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.
6. **TERMS:** Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. **SHIPMENT:**
Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyer as discharged. herein called destination.
8. Equivalent delivery from ship or store at seller's option.
9. **WEIGHTS:**
- 10a. In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof.
- 10b. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.
11. **QUALITY:**
buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within twenty days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damage, if any, to be taken by buyer at a fair allowance. If inferior thereto.
12. In the event that the carrier, for reasons beyond its control, discharges the goods at a place other than destination, in accordance with its bill of lading, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. **WAR RISK INSURANCE:** Any premium for war risk to be for buyer's account.
16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. **ARBITRATION:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner.

ACCEPTED:—

ACCEPTED:—

SELLER

BUYER

SISAL CONTRACT

NEW YORK,

1. SOLD BY:
2. TO:
3. QUANTITY: About. (5% more or less)
4. PRODUCT:
5. PRICE:
cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.
6. TERMS: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. SHIPMENT:
Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyer as discharged. herein called destination.
8. Equivalent delivery from ship or store at seller's option.
9. WEIGHTS:
- 10a. In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result, and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof.
- 10b. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.
11. QUALITY:
buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damage, if any, to be taken by buyer at a fair allowance. If inferior thereto
12. In the event that the carrier, for reasons beyond its control, discharges the goods at a place other than destination, in accordance with its bill of lading, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. WAR RISK INSURANCE: Any premium for war risk. to be for buyer's account.
16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. ARBITRATION: Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated by the other party shall be the sole arbitrator.

4. PRODUCT

5. PRICE:

cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. TERMS: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. SHIPMENT:

Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyer as discharged. herein called destination.

8. Equivalent delivery from ship or store at seller's option.

9. WEIGHTS:

10a. In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof.

10b. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. QUALITY:

buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damage, if any, to be taken by buyer at a fair allowance. If inferior thereto.

12. In the event that the carrier, for reasons beyond its control, discharges the goods at a place other than destination, in accordance with its bill of lading, any and all expenses incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. WAR RISK INSURANCE: Any premium for war risk

to be for buyer's account.

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not.

18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.

19. ARBITRATION: Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is allowed more than the amount which said seller may have offered said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

ACCEPTED:—

ACCEPTED:—

SELLER

BUYER

JAVA FIBRE CONTRACT

NEW YORK,

1. **SOLD BY:**

2. **TO:**

3. **QUANTITY:** About

4. **PRODUCT:**

5. **PRICE:**

cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free): any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. **TERMS:** Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. **SHIPMENT:**

Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyer as discharged.

herein called destination.

8. **Equivalent delivery from ship or store at seller's option.**

9. **WEIGHTS:**

10a. In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof. This contract is based on ocean freight of

10b. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. **QUALITY:**

If inferior thereto buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of this contract for fibres in similar positions. Damaged, if any, to be taken by buyers at a fair allowance.

12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. Any premium for war risk insurance to be for buyer's account.

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obliged to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.

18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government (including Government thereof (Civil or Military)) of the United States and any foreign Governments, whether made prior or

cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty-free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. **TERMS:** Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. **SHIPMENT:** Direct or indirect, with or without trans-shipment for the port of herein called destination.
The goods to be shipped sound and in good order and to be taken by buyer as discharged.
8. Equivalent delivery from ship or store at seller's option.
9. **WEIGHTS:**
- 10a. In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof.
This contract is based on ocean freight of
- 10b. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.
11. **QUALITY:** If inferior thereto buyers are
to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of this contract for fibres in similar positions. Damaged, if any, to be taken by buyers at a fair allowance.
12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. Any premium for war risk insurance to be for buyer's account.
16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond
seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obliged to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. **ARBITRATION:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is allowed more than the amount which said seller may have offered said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

ACCEPTED --

SELLER

ACCEPTED --

BUYER

BROKERS.



[fol. 95]

EXHIBIT "B" TO STIPULATION

1. It might be either ourselves or H & A.
2. a. Yes.
b. Yes.
3. By either Macleod & Company, Inc. accepting a bid from H & A or H & A accepting an offer from Macleod & Company, Inc.
4. Yes.
5. By us.
6. Yes.
7. We are Agents for the International Harvester Co. of Philippines in most cases. If we are acting as their Agent, it is so noted on the contract. The language used is:
"Sold by International Harvester Co. of Philippines by Macleod & Company, Inc., Agents".
8. In the Philippine Islands.
9. International Harvester Co. of Philippines.
10. When the contract is shipped we are immediately notified by the International Harvester Company of Philippines and we in turn pass the information on to the buyer that his contract is being shipped on such and such a steamer.
11. (A) The Bill of Lading is made out in the name of Macleod & Company, Inc., but the invoice from the International Harvester Co. of Philippines is marked for the account of H. & A.
(B) 1. No.
2. Yes.
3. To us.
4. No. Inter-office transfers.
5. No.
6. None.
12. Macleod & Company, Inc.
13. Macleod & Company, Inc. under instructions from H & A, Xenia, Ohio.

14. H & A.

15. Straight Bill of Lading.

16. No.

17. Yes, but diversion would not take place without first obtaining permission from H & A.

18. (A) No.

(B) No.

(C) No.

(D) Yes.

(E) Yes.

[fol. 96] 19. (A) To enable the mills to make arrangements for receiving the goods on arrival and to act as notification of partial fulfillment of contract.

(B) Yes.

(C) Shipments are sometimes delayed after unloading and a number of Hemp sellers are working on Letters of Credit and it is essential that Draft due are taken up. The purpose of the Pro-forma is to obtain, in advance, some 90% of the value of the hemp to meet Drafts falling due.

20. The invoice is the final statement based on actual weights.

(A) It informs the seller the exact amount due on the value of the contract.

21. International Harvester Co. of Philippines.

22. H & A as the price includes the insurance.

23. International Harvester Co. of Philippines or Macleod & Company, Inc. whosever's interest is concerned.

24. International Harvester Co. of Philippines for the account of H & A.

(A) H & A.

(B) H & A.

25. H & A.

26. Yes, standard form of contract provides as outlined but is waived in the case of H & A and H & A pay for the

goods on receipt of invoice after delivery to H & A at Xenia, Ohio.

27. (a) Yes, but rarely if ever used.

(b) In case of unusual delay in the P. I. resulting in inability of seller to fulfill contract on time, advantage is taken of delivery of goods from store, if such goods are available in store.

28. By prior arrangement.

29. No.

30. It is our belief that H & A are the direct Importers of these goods and that we are merely an Intermediary of our principals in Manila to effect the business in the United States. For securing this business, we are paid a fixed commission on every sale made by the International Harvester Co. of Philippines which commission pays the overhead costs of our office. We make no profit on such sales other than our commission.

31. Contract enclosed.

(Here follows 1 photolithograph, side folio 97)

MACLEOD & COMPANY, INC.

No. _____

NEW YORK, 60 Beaver St.
CHICAGO, 180 North Michigan Ave.

Date _____

1. MACLEOD & COMPANY, INC.

have sold,

2.

have bought,

3. QUANTITY (5% more or less) 4. PRODUCT

5. PRICE PER POUND (U. S. Currency)

The price (or prices) is per pound landed on dock at destination, and is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. TERMS: Net cash. Payment in New York or Chicago funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. SHIPMENT

Direct or indirect, with or without transshipment for the Port of sound and in good order and to be taken by buyers as discharged.

herein called destination. The goods to be shipped

8. Equivalent delivery from ship or store at seller's option.

9. WEIGHTS: Actual landed weights, less tare of four pounds per bale.

10. If before shipment of all the goods hereunder, the rates of ocean freight to port of arrival are increased by reason of the cancellation, suspension or change of tariff as the result of the imminence of war, or of war, or of governmental measures or interference, such increase in ocean freight rates shall be for the account of the buyer. If for any reason during the life of this contract, but before shipment of all the goods hereunder, ocean freight rates shall decline, the buyer is to receive the benefit thereof.

(The rate of ocean freight at the date of this contract is

U. S. Currency per bale.)

10a. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. QUALITY: If inferior as to grade, buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five (45) days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the date of this contract for fibres in similar position. Damaged goods, if any, to be taken by buyer at a fair allowance.

12. DEVIATION: In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expenses incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding fifteen (15) days from date of final discharge of vessel.

15. WAR RISK INSURANCE: For buyer's account.

16. Any wharfrage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. DELAY: Seller is not liable for delay or failure in shipments due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five (5) days after receipt of such notice, shall notify seller in writing whether buyer elects (1) to make shipment thereof as soon as seller shall be able to ship, or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be deemed to have elected (1) to make shipment thereof as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery as

The price (or prices) is per pound landed on dock at destination, and is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. **TERMS:** Net cash. Payment in New York or Chicago funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. **SHIPMENT**
Direct or indirect, with or without transshipment for the Port of sound and in good order and to be taken by buyers as discharged, herein called destination. The goods to be shipped
8. Equivalent delivery from ship or store at seller's option.
9. **WEIGHTS:** Actual landed weights, less tare of four pounds per bale.
10. If before shipment of all the goods hereunder, the rates of ocean freight to port of arrival are increased by reason of the cancellation, suspension or change of tariff as the result of the imminence of war, or of war, or of governmental measures or interference, such increase in ocean freight rates shall be for the account of the buyer. If for any reason during the life of this contract, but before shipment of all the goods hereunder, ocean freight rates shall decline, the buyer is to receive the benefit thereof.
(The rate of ocean freight at the date of this contract is U. S. Currency per bale.)
- 10a. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.
11. **QUALITY:** If inferior as to grade, buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five (45) days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the date of this contract for fibres in similar position. Damaged goods, if any, to be taken by buyer at a fair allowance.
12. **DEVIATION:** In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expenses incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding fifteen (15) days from date of final discharge of vessel.
15. **WAR RISK INSURANCE:** For buyer's account.
16. Any wharfrage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. **DELAY:** Seller is not liable for delay or failure in shipments due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery"), within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five (5) days after receipt of such notice, shall notify seller in writing whether buyer elects (1) to make shipment thereof as soon as seller shall be able to ship, or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obliged to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign governments, whether made prior or subsequent to the making of this contract.
19. **ARBITRATION:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven (7) days after receiving the other party's nomination of arbitrator, the other arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the loss to be paid by the seller if the fibre is allowed more than the amount which said seller may have offered said buyer in settlement, otherwise the loss are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

ACCEPTED:

MACLEOD & COMPANY, INC.

[fol. 98]

EXHIBIT "D" TO STIPULATION

September 17, 1941.

REPLIES TO QUESTIONNAIRE OF THOMAS C. LAWERY IN CONNECTION WITH OUR METHODS OF DOING BUSINESS WITH HOOVEN & ALLISON COMPANY, XENIA, OHIO

Preliminary negotiations are initiated either by ourselves or by Hooven & Allison Company, in other words we continually make them offers but at times when they are ready to buy they ask us what we have to offer. When we have offers firm in hand from our principals Handelsvereeniging "Amsterdam" Sourabaya we can offer them immediately, otherwise we have to cable their inquiry and obtain a definite offer for them. If they decide to buy at the price quoted they accept our offer and we in turn cable their acceptance to our principals. Sometimes they make us a bid which we submit to our principals in Java by cable, which is either accepted by them, or they may make a counter offer. If they accept the bid we in turn confirm the business to Hooven & Allison. If they make a counter offer we put same before Hooven & Allison for their consideration. If Hooven & Allison accept the counter offer the order is cabled by us to our principals.

After closing the business as above, by telephone or telegraph, we prepare the contract, which is the standard form of Sisal contract, with the changes referred to later on. The contract is made in duplicate and signed by us and these are sent to Hooven & Allison, who sign one copy and return same to us retaining the other copy for their files. A letter confirming the business usually accompanies the contract.

We definitely act as our principal's Selling Representative, and this is borne out by the fact that we offer and sell at the same price quoted by our principals and receive a fixed commission from them. Up to about a year ago the contract was made between Stein Hall & Company, Inc. and Hooven & Allison Company, both as principals, but since then we have been indicating on our contract "Sold by Stein Hall & Co., Inc. for account of Handelsvereeniging "Amsterdam", Sourabaya".

At the time the contract is entered into, the goods constituting its subject matter, are actually located in the Netherlands East Indies. As a matter of fact, oftentimes we make

sales for shipment many months later, and in that case the fiber probably has not even been produced. Our principals are growers of Sisal and Sumatra Abaca, and it has been their policy to sell for future shipment. Our Principals, Handelsvereeniging "Amsterdam", Sourabaya pay us our commission as above stated.

We are notified of the execution of the contract first by cable advice from our principals and then by mail confirmation, with their contract covering the particular sale. When the fiber is ready and packed, each bale bears a number which corresponds with a series of numbers stipulated on the ocean bill of lading and their invoice to us, thereby identifying each shipment and tying it up with the respective contract. When the goods are loaded in the vessel for shipment to the United States they are consigned on the bill of lading to a bank in the United States, notify our representative at the port of destination, i. e. one of our branches or if there is no branch at such port, then our Custom House brokers. The bills of lading also state in case of need notify Stein Hall & Co., Inc.

[fol. 99] The documents covering the shipment are sent to a bank in New York and we take delivery of said documents shortly before arrival of the vessel at the port of destination against payment by us to the bank of the value thereof.

When the goods arrive at the American port of destination, our Custom House broker clears them through the Customs in our name and arranges the forwarding of the goods to Hooven & Allison at Xenia, in accordance with the latter's instructions. We pay the cost of entry but the freight from the port of entry to Xenia is paid by Hooven & Allison. The goods are shipped from the port of entry to Xenia on a straight bill of lading and once such shipment is made, we of course do not reserve any power of disposition over the goods. The ocean bill of lading, as above explained, is made to the order of the bank for obvious financing reasons and therefore either the bank or the bona fide holder of the bill of lading have control over the goods until said goods are released by the Steamship Company upon presentation of the Bill of Lading.

The standard form of Sisal contract is a landed contract, but as you will note from the terms and conditions of the contract, the goods are entirely at the risk of the buyer

from the time they are loaded on to the vessel at port of shipment, and subsequent delivery to the buyer is contingent upon the safe and sound arrival of the goods. In the event of a catastrophe or loss of the goods while on the high seas, we are not liable for replacement. Therefore this contract is really equivalent to a c. i. f. contract except that as an accommodation to our buyers who do not have the facilities for clearance through the U. S. Customs, attending to Insurance and other claims if any weighing, forwarding, etc., we act as their representatives in performing these necessary functions. Hence this is the only reason why the Standard Sisal contract is a landed contract. In our case, since August 1940 we have been selling Hooven & Allison on this form of contract, but c. i. f. U. S. port of destination. We have stricken out the words "landed at the port of destination" and substituted "C. I. F.". Lately we have also stricken out the words "title to remain in seller until goods are fully paid for", in Clause #6. The actual procedure of clearing the goods through the Customs and forwarding them to Xenia remains the same as described above.

Although the terms of the contract specify "Payment in New York funds on delivery on dock at destination", in actual practice the goods are shipped to Hooven & Allison, Xenia, and they pay us some time afterwards, the period averaging from ten to fifteen days after presentation of our invoice. When the shipment of fiber arrives at the port of destination it is weighed, inasmuch as the sale is made on the basis of landed weights. In the meantime we send a pro forma invoice to Hooven & Allison based upon approximate weights. When the goods are weighed a final invoice giving actual weights as per public weighers certificates and based thereon, is sent to Hooven & Allison and this is the invoice which is actually passed for payment.

When shipment is made by our principals from the Netherlands East Indies, they cable us a declaration, that is advice that shipment of such and such a contract has been made, and we in turn make formal declaration to our buyer, in this case Hooven & Allison. This declaration actually serves to appropriate such lot of goods on the particular steamer for Hooven & Allison. The marine and war risk insurance are covered under our principal's open policy with American underwriters and we attend to all the details connected therewith. The beneficiary of this policy

is Handelsvereeniging "Amsterdam", Sourabaya, and/or [fol. 100] Stein Hall & Company, Inc. or order, or to Banks or Bankers as their interest may appear. The cost of the marine insurance is included in the contract price and is paid for by our principals. The war risk insurance premium is charged to Hooven & Allison as according to the terms of the contract, this is for their account. The increased value insurance is also placed by us under our principal's open policy and the premium therefor is charged to Hooven & Allison on our invoice. Should a loss occur, the difference between the contract price and the increased value price at which the goods are insured, is paid to Hooven & Allison after the claim is collected from the insurance underwriters.

According to available records there has never been a loss at sea of goods sold to Hooven & Allison by us.

All wharfage, port dues, tolls or other charges of a similar nature at the port of discharge, are for account of Hooven & Allison as covered by Clause #16 of the contract.

Clause #8 of the Standard Sisal contract reads "equivalent delivery from ship or store at seller's option", but this option has never been exercised by us, and as far as we are concerned, is superfluous as we do not carry stocks of Sisal and Abaca in this country but sell only for shipment from foreign origin.

In our opinion Hooven & Allison are definitely the importers of the goods sold by us as selling representatives of our foreign principals, Handelsvereeniging "Amsterdam", Sourabaya, producers of Sisal and Abaca in the Netherlands East Indies, in spite of the fact that the ocean bills of lading are not made out in the name of Hooven & Allison Company but are consigned to the order of a bank as above described. The fact that we or our Customs brokers attend to the Customs clearance and arrange for shipment from the port of destination to Xenia, does not, in our opinion, alter our position as we act merely as forwarding agents, and as an accommodation to our buyers.

It would seem from all of the above that the fact is well established that the goods are earmarked at the originating point of shipment for Hooven & Allison Company, and that they are therefore entirely as their risk and for their account. The services that we perform in granting credit, entering the goods through Customs and arranging for forwarding to Xenia from the port of destination, attending

to insurance and other claims, if any, are in the nature of a service to Hooven & Allison to compensate them for placing their business with us instead of sending direct cables to the shippers in the Netherlands East Indies, and thus being burdened with a great deal of foreign trade technique with which they are not familiar and not equipped to handle.

We are enclosing herewith as requested, a copy of the standard form of contract used by us at present in our dealings with Hooven & Allison. We have made the changes therein above referred to.

Stein, Hall & Company, Inc. (Signed) M. S. Rosenthal, Vice President.

Sworn to before me this 20th day of September, 1941,
Cornelius P. Coughlan, N. P., Westchester County,
N. Y. Co. Clks. No. 459, Reg. No. 30300, Commission Expires March 30, 1943.

(Here follows 1 photolithograph, side folio 101)

STANDARD TELEPHONE & TELEGRAPH CO., INC.

285 Madison Avenue

New York

SISAL CONTRACT

NEW YORK.

1. SOLD BY:
2. TO:
3. QUANTITY: About (5% more or less)
4. PRODUCT: C.I.F.
5. PRICE: cent. U. S. Currency per pound ~~XXXXXXXXXXXXXXXXXXXX~~ This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal imposed on the product covered hereby, or any change therein, shall be for the buyer's account.
6. TERMS: Payment in New York funds on delivery on dock at destination. ~~XXXXXXXXXXXXXXXXXXXX~~
7. SHIPMENT:
Direct or indirect, with or without trans-shipment for the port of herein called destination.
The goods to be shipped sound and in good order and to be taken by buyers as discharged.
8. Equivalent delivery: from ship or store at seller's option.
9. WEIGHTS:
10. In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof.
b. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.
11. Quality: If inferior thereto buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold, before or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damaged, if any, to be taken by buyer at a fair allowance.
12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses, shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. War risk insurance:
16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods, (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obligated to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Govern-

sub. to cancell

6. **TERMS:** Payment in New York funds on delivery on dock at destination. ~~TERMS: Payment in New York funds on delivery on dock at destination.~~

7. **SHIPMENT:**

Direct or indirect, with or without trans-shipment for the port of _____, herein called destination.
The goods to be shipped sound and in good order and to be taken by buyers as discharged.

8. Equivalent delivery from ship or store at seller's option.

9. **WEIGHTS:**

10a. In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyers to receive the benefit thereof.

b. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. **Quality:**

buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damaged, if any, to be taken by buyer at a fair allowance. If inferior thereto

12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. War risk insurance:

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods, (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obligated to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.

18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.

19. **Arbitration:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is allowed more than the amount which said seller may have offered, said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

ACCEPTED:—

STEIN, HALL & COMPANY, INC.

Buyer

Seller

[fol. 102] EXHIBIT "C" TO STIPULATION

James Fyfe, Flax-Hemp-Sisal-Jute, 44 Whitehall Street,
New York

September 15th, 1941.

Mr. Thomas C. Lavery, Campus Station, Cincinnati, Ohio.

DEAR MR. LAVERY:

Your favor of 13th inst. received together with questionnaire in connection with Hooven & Allison business and the following are my answers:—

1. Preliminary negotiations may be entered into by either Messrs. Hooven & Allison Co. or myself depending on circumstances. For instance, they may be interested to buy and phone requesting what I have to offer. On the other hand, I send out my offerings from time to time and the Hooven & Allison Co. may see something which they might desire to purchase and phone me.

2. This is answered by my answer to #1.

3. This is also answered by my reply to #1.

4. The answer is yes.

5. The contract is prepared by me.

6. The answer is yes.

7. I do act as agent for foreign sellers and the contract indicates on its face that I am acting as agent. The contract reads—"I have this day sold to you as Agent for Messrs. —"

8. The goods are always in a foreign country.

9. My commission is paid by my foreign principal.

10. When the material is shipped, my foreign principal cables giving the name of the steamer and I in turn pass it on to Messrs. Hooven & Allison.

11. Naturally, if the foreign principal cables stating that the goods have been shipped for Messrs. Hooven & Allison on a certain steamer, they are then definitely earmarked for Hooven & Allison and secondly, my foreign principal naturally consigns the goods to me, as his agent. As regards

the method of paying my foreign shipper, in most cases, the goods are sent to me free but I am responsible to collect the proceeds from Messrs. Hooven & Allison and remit to my principal less my commission. Messrs. Hooven & Allison do not furnish a Letter of Credit to a New York bank. Further, the material is not sold to Hooven & Allison on a C.i.f. basis. It is sold on the Standard Form of Contract of the trade which is a Landed contract.

[fol. 103] 12. On arrival of the goods at an American port, they are cleared through the customs by me.

13. This office arranges transshipment of the goods from port of arrival to Xenia, Ohio.

14. The cost of the above service is paid by Messrs. Hooven & Allison as it is included in the contract price.

15. Goods are forwarded by me from port of arrival on a straight bill of lading consigned to Messrs. Hooven & Allison Co., Xenia, Ohio.

16. The seller does not reserve any power of disposition of the goods either in the marine bill of lading or in the railroad bill of lading for the simple reason that Messrs. Hooven & Allison Co. are the importers.

17. The seller could not divert the shipment at any time if the goods are loaded on board ship for the simple reason that they are already shipped for Messrs. Hooven & Allison under a specified contract.

18. The Standard Form of Contract requires Messrs. Hooven & Allison to pay for the goods after arrival and inspection at Xenia, Ohio. The sale is, therefore, a credit sale based on the good name of the Company.

19. The cable declaration of shipment which is received by the importer is immediately passed on to Messrs. Hooven & Allison and, therefore, puts them in a position to know when they may expect arrival of the goods. When the declaration is made, it bears a definite contract number and date and, therefore, serves to indicate the fulfillment of the contract in due course. On arrival of the goods at port of entry, a pro forma invoice is generally sent to the buyers. This is a custom of the trade that the goods have arrived in a U. S. port.

20. A final invoice is sent to the buyer after the material has been weighed at port of entry and payment is expected after arrival of the goods at interior destination which in this case, is Xenia, Ohio.

21. The agent in New York generally insures the goods against both marine and war risk and also for increased value, if the buyer so desires.

22. The marine insurance is paid by the seller whereas the war risk insurance is paid by the buyer except in specified instances for certain fibres where the seller assumes up to one-half of 1% of the war risk premium.

23. The beneficiary of the marine and war risk policies is the shipper for the simple reason that until the goods are delivered in Xenia, Ohio, they are not paid for by Messrs. Hooven & Allison.

[fol. 104] 24. As already mentioned, increased value insurance is only placed by the seller or his agent at the request of the buyer. However, war risk insurance is always placed by the seller or his agent and the Standard Form of Contract stipulates that the buyer must pay the war risk insurance in addition to the contract price. The premium for increased value insurance is also paid for by the buyer and in this case, the buyer is the beneficiary.

25. Wharfage, port dues, toll or other charges of a similar nature at port of discharge are always for the buyer's account in conformity with the Standard Form of Contract.

26. The Standard Form of Contract does provide for payment in New York funds on delivery on dock at destination but this does not apply to sales to Messrs. Hooven & Allison and to my other mills who are allowed to pay after arrival and inspection of the goods at their mill. The Standard Form of Contract also provides that title is to remain in seller until goods are fully paid for but this does not apply to sales to Messrs. Hooven & Allison.

27. The Standard Form of Contract provides for equivalent delivery from ship or store at seller's option but in no case, have I ever delivered to Messrs. Hooven & Allison from store. This clause in the contract is a formal clause which has been used for many years as a safeguard to the seller.

28. Where the terms of the contract in the course of business under it are inconsistent, special arrangements can always be made between buyer and seller to meet such a contingency.

29. Up to the present time, I have had the good fortune of not losing any goods at sea which I have sold to Messrs. Hooven & Allison.

30. As agent for my various foreign principals and in my business dealings with Messrs. Hooven & Allison, I have always naturally considered them as the importers for the simple reason that my contracts with them and with many others show that—"I have this day sold to you on account of Messrs. —, the following:—". It is, therefore, clear that Messrs. Hooven & Allison are the direct importers of the goods from my foreign principals, although, handled by me in New York City as agent.

I certify that the foregoing answers to your questionnaire have been answered to the best of my ability.

Yours very truly, (Signed) James Eyfe.

Sworn to this 16th day of Sept., 1941. (Signed) Anthony Romano, Notary Public, Queens Co., No. 1842, Certificate filed in N. Y. Co. No. 140, Commission Expires March 30, 1942.

JF:RH

(Here follows 1 photolithograph, side folios 105-108)

STANDARD FORM MANILA HEMP CONTRACT, AS AGREED
TO BY MANILA CHAMBER OF COMMERCE

JAMES FYFE

No.

Flax — Hemp — Jute
Sisal

44 Whitehall St.
New York

1. SOLD BY:

2. TO:

3. QUANTITY: About

(5% more or less)

4. PRODUCT:

5. PRICE:

cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. TERMS: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. SHIPMENT:

Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyers as discharged.

herein called destination.

8. Equivalent delivery from ship or store at seller's option.

9. WEIGHTS: Actual certified weight less four pounds per bale tare.

10A. If before shipment of all the goods hereunder the rates of ocean freight to port of arrival are increased by reason of the cancellation, suspension or change of tariff as the result of the imminence of war, or of war, or of governmental measures or interferences, such increase in ocean freight rates shall be for the account of the buyer. If for any reason during the life of this contract, but before shipment of all the goods hereunder, ocean freight rates shall decline, the buyer is to receive the benefit thereof.
(The rate of ocean freight at the date of this contract is U. S. Currency per bale.)

B. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. QUALITY: If inferior thereto
buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold, afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the date of this contract for hemp in similar positions. Damaged, if any, to be taken by buyer at a fair allowance.

12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. WAR RISK INSURANCE: Entire premium for buyer's account.

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods, (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obligated to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.

18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.

19. ARBITRATION: Any dispute arising out of this contract or its interpretation shall be settled by arbitration in

5. **PRICE:** cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.
6. **TERMS:** Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. **SHIPMENT:**

Direct or indirect, with or without trans-shipment for the port of _____ herein called destination.
The goods to be shipped sound and in good order and to be taken by buyers as discharged.

8. Equivalent delivery from ship or store at seller's option.

9. **WEIGHTS:** Actual certified weight less four pounds per bale tare.

- 10A. If before shipment of all the goods hereunder the rates of ocean freight to port of arrival are increased by reason of the cancellation, suspension or change of tariff as the result of the imminence of war, or of war, or of governmental measures or interference, such increase in ocean freight rates shall be for the account of the buyer. If for any reason during the life of this contract, but before shipment of all the goods hereunder, ocean freight rates shall decline, the buyer is to receive the benefit thereof. (The rate of ocean freight at the date of this contract is _____ U. S. Currency per bale.)

- B. Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. **QUALITY:** If inferior thereto buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the date of this contract for hemp in similar positions. Damaged, if any, to be taken by buyer at a fair allowance.

12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above threat freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. **WAR RISK INSURANCE:** Entire premium for buyer's account.

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obligated to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.

18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.

19. **ARBITRATION:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is advanced more than the amount which said seller may have offered said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, County or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

ACCEPTED:—

JAMES FYFE

Flax — Hemp — Jute

Sisal

No. .

44 Whitehall St.
New York

1. SOLD BY:

2. TO:

3. QUANTITY: About

(5% more or less)

4. PRODUCT:

5. PRICE:

cents, U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax of charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. TERMS: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. SHIPMENT:

Direct or indirect, with or without transshipment for the port of . . . herein called destination.
The goods to be shipped sound and in good order and to be taken by buyers as discharged.

8. Equivalent delivery from ship or store at seller's option.

9. WEIGHTS:

10. A—In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof. This contract based on ocean freight of

B—Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. QUALITY:

buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold, afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damaged, if any, to be taken by buyer at a fair allowance. If inferior thereto

12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. WAR RISK INSURANCE: Entire premium for buyer's account.

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship; or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obligated to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.

United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. **TERMS:** Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. **SHIPMENT:**

Direct or indirect, with or without transshipment for the port of
The goods to be shipped sound and in good order and to be taken by buyers as discharged.

herein called destination.

8. Equivalent delivery from ship or store at seller's option.

9. **WEIGHTS:**

10. A—In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof. This contract based on ocean freight of:

B—Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. **QUALITY:** If inferior thereto
buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference, for various grades is to be taken as existing at the time of arrival. Damaged, if any, to be taken by buyer at a fair allowance.
12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. **WAR RISK INSURANCE:** Entire premium for buyer's account.
16. Any, wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obligated to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered, by this contract.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. **ARBITRATION:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is allowed more than the amount which said seller may have offered said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

FIBRE CONTRACT

JAMES FYFE
Flax — Hemp — Jute
Sisal
—

No.
44 Whitehall St.
New York

1. SOLD BY:

2. TO:

3. QUANTITY: About

(5% more or less)

4. PRODUCT:

5. PRICE: cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. TERMS: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. SHIPMENT:

Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyers as discharged.

herein called destination.

8. Equivalent delivery from ship or store at seller's option.

9. WARRANTIES:

10. A—In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof. This contract based on ocean freight of

B—Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. QUALITY: buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within thirty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damaged, if any, to be taken by buyer at a fair allowance.

12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expenses incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. WAR RISK INSURANCE: Any premium in excess of one-half of one per cent to be for buyer's account.

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, (hereinafter called "contingency beyond seller's control") within the time specified,

5. **PRICE:** cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.
6. **TERMS:** Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. **SUMMARY:**

Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyers as discharged.

herein called destination.

8. **Equivalent delivery from ship or store at seller's option.**

9. **WEIGHTS:**

10. **A—**In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof. This contract based on ocean freight of

B—Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of such transportation will be for buyer's account.

11. **QUALITY:** If inferior thereto
buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within thirty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damaged, if any, to be taken by buyer at a fair allowance.
12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expenses incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. **WAR RISK INSURANCE:** Any premium in excess of one-half of one per cent to be for buyer's account.
16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not. If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for sixty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obligated to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. **ARBITRATION:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is allowed more than the amount which said seller may have offered said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

JUTE CONTRACT

JAMES FYFE

Flax — Hemp — Jute

Sisal
—

No.

**44 Whitehall Street
New York**

I have this day

About

Bales (5% more or less)

The goods to be shipped sound and in good order and to be taken by buyers as discharged

SHIPMENT:—

INSURANCE:—

PAYMENT:—

ALL OTHER TERMS AND CONDITIONS to be strictly in accordance with the London Jute Association Current Contract and the New York Burlap and Jute Association Contract.

[fol. 109]

Copy

EXHIBIT "E" TO STIPULATION

Business between Messrs. Hooven & Allison Company and ourselves is sometimes initiated by us and sometimes by them. We frequently make offers to Hooven & Allison, both direct and through New York brokers. At times Messrs. Hooven & Allison advise us that they are interested in certain grades of fibre and ask us to get offers for them, or even make us bids to cable to our principals abroad. Actual business results if a bid made by Hooven & Allison is accepted by our foreign principals or if some of our offers to Hooven & Allison are accepted by them.

On the closing of business we draw up a contract which is signed by us and then sent to Messrs. Hooven & Allison for their signature. In the case of business transacted through New York brokers, the contract is drawn up by these brokers. A standard form of contract is used. In all cases signed copies are exchanged so that both buyer and seller have a signed copy for their files.

In these sales we act as agent for a foreign seller. The contract clearly shows this, for it is worded "sold by Hanson & Orth, agents for" or "sold by Hanson & Orth for account of". For acting as selling agents our foreign principals pay us a commission. At the time the goods are sold they are still located in some foreign country. We immediately notify the foreign seller by cable. In cabling the sales we allot a number to each sale. The bales to be shipped against each sale are then marked by the foreign seller with a distinctive shipping mark so that at all times each sale can be readily identified. When the goods are shipped from country of origin, the shippers send us a cable, advising us that certain sale numbers have been shipped by such and such a steamer. The practice varies in regard to drafts and documents. We represent several different sellers in several different countries, and their shipping arrangements differ somewhat. In some cases drafts accompany the bills of lading; in others, they do not. Most bills of lading are drawn to "order, notify Hanson & Orth". Some are made up in the name of our forwarding agents at outports where we have no office of our own. We have not made any sales to Messrs. Hooven & Allison on a C. I. F. basis, nor do they furnish letters of credit on New York banks.

On arrival in this country we clear the goods through the Customs; sometimes ourselves, or sometimes through our weighers and forwarders. Any cost for this service is included in the price paid by the buyers. The goods are then shipped to Messrs. Hooven & Allison Company in Xenia on a straight bill of lading. On neither the marine bill of lading nor the railroad bill of lading does the seller reserve any power of disposition over the goods, and the seller could not divert the shipment after the goods are loaded on ship, for at that time the shipment is declared to Hooven & Allison.

The contract calls for payment "on delivery on dock at destination". As a matter of practice the fibre is shipped to Xenia without waiting for any payment. Invoices are then rendered and payment is received shortly thereafter. To the extent that the fibre is shipped to the buyer on a straight bill of lading without payment, the sale is in effect a credit sale.

[fol. 110] I already mentioned the cabled declaration which we receive from our foreign shippers when shipment is effected. Immediately on receipt of this advice from abroad, we forward a declaration to Messrs. Hooven & Allison, which serves the purpose of informing them that the fibre in question has been shipped. With this knowledge they can then calculate the approximate arrival date at their mill. This declaration of course indicates the contract against which the goods have been shipped. In due course a proforma invoice is rendered to the buyers. This is sent to enable the buyers to know the approximate value of the shipment in question and to permit them to make a payment on account. The final invoice cannot be rendered until after the fibre has been weighed and we have received weight returns from our public weighers. After these details have been received, we render a final invoice, which leads to the complete settlement of the transaction.

The seller insures the goods against loss during transit and pays the premium for this insurance, although of course he passes this along to the buyer by including it in the sale price. The seller is the beneficiary of the insurance policy because if the goods were to be lost at sea, it would be before the buyer is called upon to make a payment. Increased value insurance and war risk insurance are both arranged for by the seller, although the premiums for both these forms of insurance are charged to the buyer in the

final invoice. The increased value insurance is for the benefit of the buyer, whereas the war risk insurance is for the benefit of the seller.

The contract provides that any wharfage; port dues, toll, or other charges of a similar nature at the port of discharge are for buyer's account.

Most of our sales to Hooven & Allison are covered by contracts which include the clause "payment in New York funds on delivery on dock at destination, title to remain in seller until goods are fully paid for". However, in some contracts the words "title to remain in seller until the goods are fully paid for" has been omitted.

The standard form of contract provides for "equivalent delivery from ship to store at seller's option", but we have never exercised this option in the case of sales made to Messrs. Hooven & Allison.

I believe that the terms of the contract and the course of business transacted under it are entirely consistent, with the single exception that in the case of sales to Messrs. Hooven & Allison we do not insist on payment on delivery on dock. In the case of certain other buyers we do insist on payment exactly as called for in the contract, but in dealing with a firm of such high standing as Hooven & Allison, this technicality is waived.

I do not recall any case of a complete loss of fibre at sea on any sale to Hooven & Allison. Some months ago some Java Sisal sold to these friends, while not actually lost, was so badly damaged that it was considered a total loss and abandoned to underwriters.

[fol. 111] Viewing the entire course of these business transactions, in my opinion Hooven & Allison should be considered as the real importer, for I believe that the fundamental consideration is the fact that certain identifiable parcels of fibre are shipped from foreign countries specifically for Hooven & Allison and brought into this country on their orders and for their use.

(Signed) William Knight.

Sworn to before me this 16 day of Sept. 1941, (Signed)
Mary E. Murphy, Notary Public, Kings Co. No.
513, Certificate filed in N. Y. Co. No. 283. Com-
mission expires March 30, 1943.

(Here follow 2 photolithographs, side folios 112-113.)

NEW YORK

SISAL CONTRACT

No.

New York,

1. Sold by:

SISAL CONTRACT

No.

New York,

1. Sold by:
2. To:
3. Quantity: About
4. Product:
5. Price:

(5% more or less)

cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. Terms: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. Shipment:

Direct or indirect, with or without trans-shipment for the port of herein called destination. The goods to be shipped sound and in good order and to be taken by buyer as discharged.

8. Equivalent delivery from ship or store at seller's option.

9. Weights:

10. (a) In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof.

(b) Where the price includes the cost of transportation from port of arrival to an interior point, any change in the cost of said transportation will be for buyer's account.

11. Quality: To be guaranteed as above. If inferior thereto buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damaged, if any, to be taken by buyer at a fair allowance.

12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.

15. War risk insurance:

16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not.

If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obliged to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.

Direct or indirect, with or without trans-shipment for the port of herein called destination. The goods to be shipped sound and in good order and to be taken by buyer as discharged.

8. Equivalent delivery from ship or store at seller's option.
9. Weights:
10. (a) In the event that carriers cancel or suspend their contracts of affreightment or change their tariffs due to war or imminent danger of war or Governmental measures or interference, any change in the cost of ocean transportation affecting these goods will be for buyer's account. If, as a result of and due to (a) termination of a period of imminent danger of war, or (b) termination of war, or (c) Governmental measures or interference, the cost of ocean transportation affecting these goods decreases, the buyer is to receive the benefit thereof.
(b) Where the price includes the cost of transportation from port of arrival to an interior point any change in the cost of said transportation will be for buyer's account.
11. Quality: To be guaranteed as above. If inferior thereto buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of arrival. Damaged, if any, to be taken by buyer at a fair allowance.
12. In the event that the carrier, for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of final discharge of vessel.
15. War risk insurance:
16. Any wharfage, port dues, toll or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not.
If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obliged to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. Arbitration: Any dispute arising out of this contract or its interpretation shall be settled by arbitration in _____ in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is allowed more than the amount which said seller may have offered said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

HANSON & ORTH
NEW YORK

MANILA HEMP CONTRACT

NO.

NEW YORK.

1. SOLD BY:

2. TO:

3. QUANTITY: About

(5% more or less)

4. PRODUCT:

5. PRICE:

cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.

6. TERMS: Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.

7. SHIPMENT:

Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyer as discharged

herein called destination.

8. Equivalent delivery from ship or store at seller's option.

9. WEIGHTS: To be taken as landed from steamer, less four pounds per bale tare.

10. (a) If before shipment of all the goods hereunder the rates of freight to point of destination are increased by reason of the cancellation, suspension or change of tariff as a result of, the imminence of war, or of war, or of governmental measures or interference, such increase in freight rate shall be for the account of the buyer. If for any reason during the life of this contract, but before shipment of all the goods hereunder, freight rates shall decline, the buyer is to receive the benefit thereof.

The rate of ocean freight at the date of this contract is _____

(b) Where the price includes the cost of transportation from port of arrival to an interior point any change in the cost of said transportation will be for buyer's account.

11. QUALITY: To be guaranteed as above. If inferior thereto buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of this contract for fibres in similar positions. Damaged, if any, to be taken by buyer at a fair allowance.

12. In the event that the carrier for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.

13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or damaged by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.

14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of discharge of vessel.

15. Any premiums for war risk insurance to be for buyer's account.

16. Any wharfrage, port dues or other charges of a similar nature at the port of discharge to be for buyer's account.

17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not.
If called because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter

5. **PRICE:** cents U. S. Currency per pound landed on dock at destination. This price is based upon the present import duty (duty free); any change whether in rate, classification, or in the basis or method of assessing same, or any excise or other tax or charge, United States, State or Municipal, imposed on the product covered hereby, or any change therein, shall be for the buyer's account.
6. **TERMS:** Payment in New York Funds on delivery on dock at destination. Title to remain in seller until goods are fully paid for.
7. **SHIPMENT:**

Direct or indirect, with or without trans-shipment for the port of
The goods to be shipped sound and in good order and to be taken by buyer as discharged.

herein called destination.

8. **Equivalent delivery** from ship or store at seller's option.
9. **WEIGHTS:** To be taken as landed from steamer, less four pounds per bale tare.
10. (a) If before shipment of all the goods hereunder the rates of freight to point of destination are increased by reason of the cancellation, suspension or change of tariff as a result of, the imminence of war, or of war, or of governmental measures or interference, such increase in freight rate shall be for the account of the buyer. If for any reason during the life of this contract, but before shipment of all the goods hereunder, freight rates shall decline, the buyer is to receive the benefit thereof.
The rate of ocean freight at the date of this contract is _____.
- (b) Where the price includes the cost of transportation from port of arrival to an interior point any change in the cost of said transportation will be for the buyer's account.
11. **QUALITY:** To be guaranteed as above. If inferior thereto buyers are to take the goods at a fair allowance. Any claim on account of quality or condition of goods sold afloat or for shipment must be made within forty-five days after arrival of vessel at destination. The market difference for various grades is to be taken as existing at the time of this contract for fibres in similar positions. Damaged, if any, to be taken by buyer at a fair allowance.
12. In the event that the carrier for reasons beyond its control, in accordance with its bill of lading, discharges the goods at a place other than destination, any and all expense incident to transporting the goods to destination, over and above direct freight charges from original port of shipment to above destination, shall be for buyer's account. Any refund or absorption by the carrier of any such charges or expenses shall accrue to the benefit of the buyer.
13. In the case of loss after shipment, or acceptance of abandonment by the insurance underwriters, of all or any portion of the goods, such portion to be excluded from contract and the quantity reduced accordingly, but buyer is bound to accept goods delayed on voyage or arriving by carrier other than that by which originally shipped. This also applies to goods substituted under the equivalent delivery clause.
14. Seller to hold the goods covered under the terms of his marine insurance policy while on dock for a period not exceeding 15 days from date of discharge of vessel.
15. Any premiums for war risk insurance to be for buyer's account.
16. Any wharfage, port dues or other charges of a similar nature at the port of discharge to be for buyer's account.
17. Seller is not responsible for any liability for delay or failure in shipment due to any contingencies whatsoever beyond seller's control, whether now in contemplation of either of the parties hereto or not.
If seller, because of any contingency beyond seller's control, shall be unable to ship all or any portion of the goods (hereinafter referred to as the "delayed delivery") within the time specified, the time for shipment of such delayed delivery shall automatically be extended for thirty days; if seller shall not ship such delayed delivery within said extended period, seller shall give notice to buyer and buyer within five days after receipt of such notice shall notify seller in writing whether buyer elects (1) to take shipment thereof as soon as seller shall be able to ship or (2) cancel shipment thereof. If buyer shall fail to give notice within said time, buyer shall be obliged to take shipment of such delayed delivery as soon as seller shall be able to ship. Cancellation of shipment of such delayed delivery, as aforesaid, shall not affect the rights of the parties with respect to the balance, if any, of the goods covered by this contract.
18. Performance under this contract is subject to all laws, regulations, orders, actions, interventions and instructions of the Government or any department thereof (Civil or Military) of the United States and any foreign Governments, whether made prior or subsequent to the making of this contract.
19. **ARBITRATION:** Any dispute arising out of this contract or its interpretation shall be settled by arbitration in the customary manner, buyer and seller each naming their arbitrator, whose award, or that of the umpire whom the arbitrators may appoint, shall be final and binding on both parties. If either party fails to appoint an arbitrator within seven days after receiving the other party's nomination of arbitrator, the one arbitrator nominated may act as sole arbitrator. In case of alleged inferiority, the fees to be paid by the seller if the fibre is allowanced more than the amount which said seller may have offered said buyer in settlement, otherwise the fees are to be paid by the buyer. Seller and buyer consent that the arbitration shall be enforceable under and pursuant to the laws of the State, Country or Government having jurisdiction and that judgment upon the award may be entered in any court of any such jurisdiction.

[fol. 114]

APPELLANTS' EXHIBIT No. 2

Department of Taxation, Board of Tax Appeals

No. 4441

THE HOOVEN AND ALLISON COMPANY, Xenia, Ohio, Appellant,

v.

WILLIAM S. EVATT, Tax Commissioner, Columbus, Ohio,
Appellee

STIPULATION

It is agreed by and between counsel for the respective parties to this proceeding that the tangible personal property in appellant's inventory in the original packages in which such property was imported into the United States from countries other than the Philippine Islands and from the Philippine Islands during the taxable years 1938, 1939, and 1940, came from the sources and had the value herein set forth:

Year	Source	Value
1938	Countries other than the Philippine Islands	\$410,030
1938	Philippine Islands	57,500
1939	Countries other than the Philippine Islands	225,080
1939	Philippine Islands	49,750
1940	Countries other than the Philippine Islands	191,990
1940	Philippine Islands	29,800

Thomas C. Lavery, Attorney for Appellant; Aubrey
A. Wendt, Asst. Atty. Gen., Attorney for Appel-
lee

[fol. 115] IN THE SUPREME COURT OF OHIO

No. 29,531

THE HOOVEN & ALLISON COMPANY, a Corporation, Appellant,

v.

WILLIAM S. EVATT, Tax Commissioner of Ohio, Appellee

NOTICE OF APPEAL

Appellant, the Hooven & Allison Company, Xenia, Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the final entry of the Board of Tax Appeals of the Department of Taxation of Ohio, entered on the 19th day of March, 1943, as follows:

"No. 4441"

Before the Board of Tax Appeals, Department of Taxation
of Ohio

THE HOOVEN & ALLISON COMPANY, Xenia, Ohio, Appellant,

vs.

WILLIAM S. EVATT, Tax Commissioner of Ohio, Appellee

ENTRY.

[fol. 116] This day this cause came on to be heard and was submitted upon the transcript of the proceedings before the Tax Commissioner, the stipulation of facts, the evidence and briefs.

The Board of Tax Appeals being fully advised in the premises finds that the appellant, a corporation, filed an intercounty tax return for each of the years 1938, 1939 and 1940. In each of said returns appellant omitted from its manufacturing inventory certain fibers produced in the Philippine Islands and in foreign countries claiming that said fibers were imports and not taxable by the State of Ohio. From its 1938 return appellant omitted fibers coming from the Philippine Islands of the value of \$57,500 and fibers coming from other countries of the value of \$410,030.00; from its 1939 return appellant omitted fibers coming from the Philippine Islands of the value of \$49,750.00 and fibers coming from other countries of the value of \$225,-

080.00; from its 1940 return appellant omitted fibers coming from the Philippine Islands of the value of \$29,800.00 and fibers coming from other countries of the value of \$191,990.00, said amounts representing the average value of said fibers held in appellant's inventory during the preceding years respectively. On July 3, 1941 the Tax Commissioner made amended assessments against appellant for said years increasing appellant's average inventory by the above amounts respectively. This appeal is from an order of the Tax Commissioner denying appellant's application for review and redetermination.

The Board further finds that said fibers were stored at appellant's manufacturing plant at Xenia, Ohio, in the original packages as a part of its manufacturing inventory and that they were purchased from New York firms acting as agents of the vendors and shippers of said goods under [fol. 117] written contracts signed by the agents and the appellant. Said contracts provide for delivery on dock at Baltimore, Maryland or other United States ports; for payment on delivery on dock at destination, title to remain in seller until goods are fully paid for; that in case of loss at sea, the portion of the goods so lost shall be excluded from the contract and the quantity reduced accordingly; that said goods were shipped by the seller to port of destination consigned to seller's agent and insured while at sea with loss payable to seller or seller's agent; and that on arrival they were cleared through port of entry and duties and other expenses, if any, were paid by seller's agent. Said goods were then reshipped by seller's agent to appellant at Xenia, Ohio.

The Board further finds that the fibers contained in appellant's inventory which came from the Philippine Islands did not come from a foreign country and were not imports within the meaning of Article I, Section 10 of the Constitution of the United States or under the provisions of the tariff act, 19 U. S. C. A. 1336.

The Board further finds that appellant is not the importer of the fibers which came from foreign countries as it did not acquire title until after said goods had been entered and delivered on dock at Baltimore, Maryland or other United States port and that said goods have lost their characteristics as imports and are taxable by the State of Ohio.

It is therefore ordered that the assessments heretofore made herein by the Tax Commissioner against appellant for

the years 1938, 1939 and 1940 be and the same hereby are respectively affirmed and that said appeal be and the same hereby is denied.

I hereby certify the foregoing to be a true and correct copy of the action of the Board of Tax Appeals of the Department of Taxation, this day taken, with respect to the above matter.

Harry J. Rose, Secretary." (Seal)

ASSIGNMENTS OF ERROR

The appellant avers that in the record and proceedings before the Board of Tax Appeals, Department of Taxation, State of Ohio, and in the final order entered by said board manifest error occurred and intervened to the prejudice of the appellant, who now assigns the following errors and each of them, which it avers occurred in said record, proceedings, opinion, and final entry of said Board:

The Board of Tax Appeals, Department of Taxation, State of Ohio, erred:

(1) in that it found that the fibers contained in appellant's inventory which came from the Philippine Islands did not come from a foreign country and were not imports within the meaning of Article I, Section 10, of the Constitution of the United States;

(2) in that it found that appellant was not the importer of the fibers contained in appellant's inventory which came from foreign countries within the meaning of Article I, Section 10, of the Constitution of the United States;

(3) in that it found that the fibers contained in appellant's inventory had lost their characteristics as imports, within the meaning of Article I, Section 10, of the Constitution of the United States, and had become taxable by the State of Ohio;

(4) in that it failed to find that the fibers contained in appellant's inventory which came from the Philippine Islands did come from a foreign country and were imports within the meaning of Article I, Section 10, of the Constitution of the United States;

(5) in that it failed to find that the appellant was the importer of the fibers which came from foreign countries

within the meaning of Article I, Section 10, of the Constitution of the United States;

(6) in that it failed to find that the fibers contained in appellant's inventory had retained their characteristics as imports within the meaning of Article I, Section 10, of the Constitution of the United States, and were immune from taxation by the State of Ohio;

(7) in that it affirmed the assessments heretofore made by the appellee, the Tax Commissioner of Ohio, against appellant for the years 1938, 1939, and 1940, in violation of Article I, Section 10, of the Constitution of the United States;

(8) in that it denied the appeal of the appellant from the assessments heretofore made by the appellee, the Tax Commissioner of Ohio, for the years 1938, 1939, and 1940, in violation of Article I, Section 10, of the Constitution of the United States;

(9) in that its final entry is not supported by the evidence and is contrary to the provisions of Article I, Section 10, of the Constitution of the United States;

(10) in that its entry is contrary to the evidence contained in the record and to facts set forth in its opinion, in violation of Article I, Section 10, of the Constitution of the United States;

(11) in that it committed errors not apparent of record or not disclosed to appellant.

[fol. 120] William S. Evatt, Tax Commissioner of the Department of Taxation of Ohio, is designated appellee herein.

Said appeal is on questions of law and fact.

The Hooven & Allison Company, by Its Attorneys,
Thomas C. Lavery, Marcus E. McCallister.

Acknowledgment

Receipt of a copy of the notice of appeal to the Supreme Court of Ohio in the above-entitled cause is hereby acknowledged on this 13th day of April, 1943.

William S. Evatt, Tax Commissioner.

Proof of Filing of Notice of Appeal With the Board of Tax Appeals

The undersigned hereby certifies that appellant, The Hooven & Allison Company, filed its notice of appeal in the

above-entitled cause with the Board of Tax Appeals of the Department of Taxation of the State of Ohio, on the 13th day of April, 1943, and filed a written demand requesting said Board to file with the Supreme Court a certified transcript of the record of the proceedings of said Board pertaining to the decision in the above-entitled cause.

Harry J. Rose, Secretary.

[fol. 121] CONSTITUTIONAL PROVISION INVOLVED

Article I, Section 10, Clause 2, Constitution of the United States

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

[fol. 122] BEFORE THE BOARD OF TAX APPEALS, DEPARTMENT OF TAXATION OF OHIO

No. 4441

THE HOOVEN & ALLISON COMPANY, Xenia, Ohio, Appellant,

vs.

WILLIAM S. EVATT, Tax Commissioner of Ohio, Appellee

OPINION—March 19, 1943

The appellant, a corporation, filed an inter-county tax return for each of the years 1938, 1939 and 1940. In each of said returns appellant omitted from its manufacturing inventory certain fibers produced in the Philippine Islands and in foreign countries claiming that said fibers were imports and not taxable by the State of Ohio. From its 1938 return appellant omitted fibers coming from the Philippine Islands of the value of \$57,500.00 and fibers coming from other countries of the value of \$410,030.00; from its 1939

return appellant omitted fibers coming from the Philippine Islands of the value of \$49,750.00 and fibers coming from other countries of the value of \$225,080.00; from its 1940 return appellant omitted fibers coming from the Philippine [fol. 123] Islands of the value of \$29,800.00 and fibers coming from other countries of the value of \$191,990.00, said amounts representing the average value of said fibers held in appellant's inventory during the preceding years respectively. On July 3, 1941 the Tax Commissioner made amended assessments against appellant for said years increasing appellant's average inventory by the above amounts respectively. Appellant filed an application for review and redetermination with the Tax Commissioner which was denied, whereupon the appellant filed the appeal herein.

The appellant is engaged in the business of manufacturing rope and twine products at Xenia, Ohio, in which manufacturing business it uses various fibers produced in the Philippine Islands and in foreign countries. Part of appellant's inventory consisted of these fibers in the original packages. Appellant claims that said fibers are imports and under the provisions of the Constitution of the United States are immune from taxation by the State of Ohio.

The record shows that these fibers were purchased from New York firms acting as agents of the vendors and shippers of said goods, part of which goods came from the Philippine Islands and part of which came from foreign countries; that these goods were purchased under written contracts prepared in duplicate or triplicate by the New York agent; that said contracts were signed in New York by the agent and forwarded to Xenia, Ohio, where they were signed by the appellant, one copy of which was retained by appellant and the others returned to the New York agent. Said contracts provide for delivery on dock at Baltimore, Maryland or other United States port; for payment on delivery on dock at destination; title to remain in seller until goods are fully paid for; that any increase [fol. 124] in the cost of ocean transportation of said goods will be for the buyer's account and any decrease for buyer's benefit; and that in case of loss at sea the portion of the goods so lost shall be excluded from the contract and the quantity reduced accordingly. The record shows that these goods were shipped by the seller to the port of destination consigned to the seller's agent. In some instances

a sight draft was attached to the bill of lading and in some instances the goods were consigned to the order of a bank, notify shipper's agent and the appellant. The goods while at sea were insured either by the seller or seller's agent. In case of loss at sea the insurance was payable either to seller or seller's agent. In cases where the bill of lading had a sight draft attached or was forwarded to a bank, it was taken up by the seller's agent. On arrival of the goods they were cleared through the port of entry by the seller's agent. The duties and other expenses, if any, were paid by the seller's agent, said expenses being included in the contract price. In practice the agent did not enforce the contract provision for cash on delivery but shipped said goods by rail from port of entry to appellant under a straight bill of lading. After arrival of the goods at Xenia, Ohio, appellant paid the contract price by check payable to seller's agent. The freight charges from port of entry to appellant's plant were paid by the appellant. While said goods were at sea the buyer carried "increased value insurance." War risk insurance while the goods were at sea was taken out by the shipper or its agent for the account of the buyer.

Goods that still retain their character as imports at the time the tax is proposed to be assessed are immune from state taxation under the provisions of Article I, Section 10 [fol. 125] of the Constitution of the United States. In this connection it must be established that the taxpayer is the importer, that the goods are still in the original packages in which they were imported and that they have not been sold or mortgaged by the importer or in any other way used or commingled with the goods and property of the state so as to lose their character as imports. The decisions seem to rest on the underlying principle that the goods are imported for sale and that while held by the importer they are still in a sense *in transitu*.

In *Brown et al v. The State of Maryland*, 12 Wheat. 419, 6 L. ed. 678, 688, it is stated:

"Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce."

In the instant case the record shows that these goods are in a warehouse at the manufacturing plant of the appellant and in the original packages; that they are held the same as any other raw material on hand and ready for use as the appellant may require them in its manufacturing business; that they are carried as a part of appellant's manufacturing inventory and reflected in its financial statement the same as any other asset of the company; that these statements are used by the appellant in the regular course of its business, furnished to banks for the purpose of obtaining credit, etc.; and that said goods are not held for sale. Even if appellant is the importer it may well be questioned whether said goods maintain the characteristics of imports within the meaning of the Constitution. They have reached their final destination. They cannot be said in any sense to [fol. 126] be still in commerce, or *in transitu*, or held in connection therewith.

The word imports as used in the Constitution means articles imported from a foreign country and does not include articles transported from a state or territory of the United States to some other state or territory of the United States. *14 Diamond Rings v. United States*, 183 U. S. 176, 46 L. ed. 138. See *American Steel & Wire Company v. Speed*, 192 U. S. 500, 48 L. ed. 538. *Brown v. Houston*, 114 U. S. 622, 29 L. ed. 257. In the latter case the first syllabus is as follows:

"1. The term 'imports' as used in that clause in the Constitution which declare that 'No State shall, without the consent of Congress, lay any imposts or duties on imports or exports,' does not refer to articles carried from one State to another, but only to articles imported from foreign countries into the United States."

The tariff act contains the following definitions, 19 U. S. C. A. 1336:

"(h) For the purpose of this section—

(1) The term 'domestic article' means an article wholly or in part the growth or product of the United States; and the term 'foreign article' means an article wholly or in part the growth or product of a foreign country.

(2) The term 'United States' includes the several States and Territories and the District of Columbia.

(3) The term 'foreign country' means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions)."

[fol. 127] It follows that that portion of the goods involved shipped from the Philippines are not imports within the meaning of the Constitution and are not exempt from taxation.

The goods shipped from foreign countries were imported, but if they were imported before title became vested in the appellant, they have lost their characteristics as imports and are subject to state taxation.

In *Waring v. Mayor, etc., of Mobile*, 8 Wall. 110, 19 L. ed. 342, 345, the court referring to the federal statute said:

"All duties on goods, wares and merchandise imported shall be paid or secured to be paid before a permit shall be granted for landing the same"; which shows, to a demonstration that all the salt in this case was imported before the property in the same became vested in the complainant. . . . No one pretends that any of those acts can be performed before the goods are imported."

In that case the court held that the seller was the importer and while the facts are somewhat different, the material elements of risks, insurance, etc., are similar to those of the instant case.

The present tariff act provides, 19 U. S. C. A., 1483:

"For the purpose of this title—

(4) All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along the coast of the United States may be regarded as consignees.

[fol. 128] (2) A person making entry of merchandise under the provisions of subdivision (h) or (i) of sec-

tion 484 (Sec. 1484 (h) or (i) of this title) (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof."

19 U. S. C. A. 1484 (a) provides:

"Except as provided in sections 490, 498, 552, and 553 and in subdivision (j) of section 336 of this act (secs. 1490, 1498, 1552, and 1553 and in sec. 1336 (j) of this title), and in subdivisions (h) and (i) of this section, the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe. Such entry shall be made at the customhouse within forty-eight hours, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the collector authorizes in writing a longer time."

In the instant case the goods were consigned to the seller's agent and under the provisions of the present tariff act, above quoted, said agent was the owner until the goods were cleared through customs. These provisions are similar to the provisions of the tariff act considered in *Waring v. Mayor, supra*.

In *Lafontan v. Elting*, 54 Fed. (2d) 664, 666, it was held:

"It is urged, however, by the defendants that the bill in the present case was a straight bill made out to American Import & Export Corporation 'or . . . assigns,' and that delivery could therefore properly be made to the named consignee without production of the bill. That, undoubtedly, is the law in this country with [fol. 129] respect to railroad carriers, and the Uniform Bills of Lading Acts . . . ; but it is otherwise in England with respect to water carriers . . ."

"In the present case, delivery under the federal statute could not legally be made without the production of the bill of lading, unless bond was given. No differentiation is made in that respect between straight and order bills, . . ."

Both the appellant and appellee in their briefs quote from the Uniform Sales Act, Ohio General Code, Section 8399. Whether the provisions of this act are applicable to these contracts, it is unnecessary to decide. It may be stated, however, that in so far as the issues herein involved are concerned said act is only declaratory of the legal principles existing prior thereto under which the same result would be reached.

In *B. & O. S. W. Ry. Co. v. Good et al.*, 82 O. S. 278, it was held in the first syllabus:

"In sales of specific chattels for cash on delivery, delivery and payment are concurrent acts, and delivery in the expectation of receiving immediate payment is not absolute but conditional, and when there is no waiver of payment, the property does not pass until the price is paid."

In *Rehr v. Lumber Company*, 110 O. S. 208; 214, the court held that Rule 4 of Section 8399, Ohio General Code, was not applicable and stated:

"The facts disclosed by the evidence, heretofore pointed out, warrant the conclusion that the intention of the parties was that there should be no complete delivery of the timbers until the conditions upon which delivery was to be completed had been complied with;

[fol. 130] The contracts herein involved come within the provisions of Rule 5 of Section 8399, Ohio General Code, which is as follows:

"If a contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon."

In 35 *Ohio Jurisprudence*, Article 77, p. 791, it is stated:

"If the contract calls for shipment 'f.o.b. buyer's point,' it anticipates delivery by the seller at that point, and, since something remains to be done by the seller before he has carried out his contractual obligation, the normal presumption would be that title did not pass until

delivery at the stated point. General Code, Section 8399, Rule 5, carries out this natural assumption."

In the instant case the goods were delivered by the seller on dock at Baltimore. The price was as a "landed price" and under the provisions of the general law or the Uniform Sales Act, title did not pass prior to the point of delivery.

It follows that the goods purchased from foreign countries were not imported by the appellant and that said goods are taxable by the State of Ohio.

Board of Tax Appeals.

[fol. 131]

No. 29531

ABSTRACT OF DOCKET OF BOARD OF TAX APPEALS

Appellant: The Hooven & Allison Company, Xenia, Ohio, No. 4441.

Appellee: William S. Evatt, Tax Commissioner of Ohio, Columbus, Ohio.

Attorneys: Messrs. Thomas C. Lavery, Cincinnati, Ohio, and Marcus E. McCallister, Xenia, Ohio, on behalf of the appellant.

Hon. Thomas J. Herbert, Attorney General of Ohio, and Mr. Aubrey A. Wendt, Assistant Attorney General.

Filed: July 31, 1941.

Nature of Appeal: Personal Property.

Date of Hearing: April 23, 1942, Columbus, Ohio.

Journal Entry: March 19, 1943.

[fol. 132] IN SUPREME COURT OF OHIO, JANUARY TERM, 1943

29531

Title of Case

THE HOOVER & ALLISON COMPANY, a Corporation, Appellant,

vs.

WILLIAM S. EVATT, Tax Commissioner of Ohio, Appellee

Action: Appeal from the Board of Tax Appeals

Attorneys: .

Thomas C. Lavery, 1759 Union Commerce Bldg., Cleveland.

Marcus E. McCallister, Xenia, O.

Thomas J. Herbert, Aubrey A. Wendt, Columbus.

Memoranda of Pleadings, &c., Filed, Writs Issued, &c.

DOCKET ENTRIES

Apr. 13, 1943. Notice of appeal & proof of service filed.

May 5, 1943. Transcript of Record & Abstract of Docket of Bd. of Tax Appeals filed.

May 19, 1943. Transcript taken out by Thomas C. Lavery. 8/4/43 returned.

May 19, 1943. Application of Appellant for an extension of time to file brief filed.

May 19, 1943. Entry extending time for filing appellant's brief herein to July 6, 1943. E. S. Matthias, J. J 37-191.

June 25, 1943. Entry extending time for filing appellant's printed brief herein to August 5, 1943. E. S. Matthias, J. J 37-225.

Aug. 4, 1943. Appellant's printed brief & proof of service filed.

Aug. 31, 1943. Transcript taken out by Atty. Gen. Office. Sept. 7, 1943 returned.

Sept. 10, 1943. Leave to file appellee's brief on merits instantur filed.

Sept. 10, 1943. Appellee's printed brief & acknowledgment of service filed. 9/13/43 Proof of Service filed.

Oct. 11, 1943. Appellant's printed reply brief filed. 10/13/43 Proof Service filed.

[fol. 133] Nov. 24, 1943. Decision affirmed. J 37-315.

Dec. 7, 1943. Application for rehearing filed.

Dec. 15, 1943. Rehearing denied. J 37-334.

Jan. 7, 1944. Transcript of Record withdrawn by A. A.

Wendt. 1/10/44 returned.

Jan. 22, 1944. Pre-cipe for transcript of record filed.

JOURNAL ENTRIES

V. 37-191.

29531

Wednesday, May 19, 1943.

Upon application of appellant, and for good cause shown, it is ordered that the time for filing appellant's printed brief herein be, and the same hereby is, extended to July 6, 1943.

29531

Friday, June 25, 1943.

Upon application of appellant, and for good cause shown, it is ordered that the time for filing appellant's printed brief herein be, and the same hereby is, extended to August 5, 1943. J 37-225.

JUDGMENT

29531

Wednesday, November 24, 1943.

This cause came on to be heard upon the transcript of the record of the Board of Tax Appeals and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the decision of the said Board of Tax Appeals be and the same hereby is affirmed for the reasons stated in the opinion rendered herein; and it appearing to the court that there was reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

Ordered, That a special mandate be sent to the Board of Tax Appeals to carry this judgment into Execution. J 37-315.

[fol. 134]

ORDER DENYING REHEARING

29531

Wednesday, December 15, 1943.

Upon consideration of the application for rehearing herein, it is ordered by the Court that rehearing be, and the same hereby is, denied. J 37-334.

[fol. 135] Clerk's Certificate to foregoing paper omitted in printing.

THE HOOVEN & ALLISON Co., Appellant,

v.

EVATT, Tax Commr., Appellee

Taxation—Ohio corporation not an importer, when—State empowered to levy general property tax on imported goods, when.

1. Where an Ohio corporation contracts to purchase fibers grown in a foreign country at a landed price at port of entry in this country, with title to remain in the seller until goods are paid for, and such fibers are transshipped by seller's agent from port of entry to purchaser in Ohio, such Ohio corporation is not an importer.
2. The state has the power to levy a general property tax on imported goods so long as such tax does not intercept the import in its way to become incorporated with the general mass of property or deny to the import the privilege of becoming so incorporated until it shall have contributed to the revenue of the state.

(No. 29531—Decided November 24, 1943)

Appeal from the Board of Tax Appeals

Appellant is a corporation with its principal place of business in Xenia, Ohio, where it is engaged in the business of manufacturing rope, twine, packing, binder twine and similar products. Appellant's raw materials consist of manila hemp from the Philippine Islands; Java sisal from the Dutch East Indies; African sisal from British and Portuguese East Africa; Mauritius hemp from the island of Mauritius; jute from India; soft hemp from Italy, the Balkan states and South America as well as some fibers from Mexico and Cuba.

Appellant buys substantially all of its fibers from foreign producers represented by five New York agents who make frequent offers of fibers to appellant and appellant sometimes make counteroffers. When a sale is agreed upon the New York agent of the seller prepares and forwards to appellant a contract in duplicate signed by the agent on

behalf of his principal, which contract is then signed by [fol. 137] appellant. The contract covers the quantity of fiber wanted, the landed price, the time of shipment and frequently a designation of the steamship company upon whose vessel the fiber is to be shipped.

The contract also provides for delivery on dock at Baltimore, Maryland, or other United States port; for the payment on delivery on dock at destination, title to remain in seller until goods are fully paid for; that any increase in the cost of ocean transportation of such goods will be for the buyer's account and any *any* decrease for the buyer's benefit; and that in case of loss at sea the portion of goods so lost shall be excluded from the contract and the quantity reduced accordingly.

The record shows that the goods in question were shipped by sellers to the port of destination consigned to seller's agents. In cases where the bill of lading had a sight draft attached or was forwarded to a bank, it was taken up by seller's agent. On arrival the goods were cleared through the port of entry by seller's agent, the duties and other expenses, if any, were paid by the seller's agent. In practice the agent did not enforce the contract provision for cash on delivery but shipped said goods by rail from the port of entry to appellant under a straight bill of lading. After arrival of the goods at Xenia, Ohio, appellant paid the contract price by check payable to the seller's agent. The freight charges from the port of entry to appellant's plant were paid by appellant.

When the fiber was loaded on board ship at the point of origin, appellant received from the New York agent a declaration setting forth the name of the vessel, the number of bales shipped and the approximate date of arrival in the United States. About the time the fiber arrived at the port of entry in this country, a *pro forma* invoice giving the approximate tonnage and value of a shipment was sent by seller's agent to appellant. When [fol. 138] the fiber arrived at port of entry it was brought through the customs, weighed and shipped by rail under a straight bill of lading to Xenia, Ohio.

Appellant paid landed price which included the cost of fiber at point of origin plus normal ocean freight charges, insurance, clearance through the customs and arrangements for transshipment to Xenia. No duty is imposed on any of the fibers except true hemp which appellant always

buys duty paid. Appellant pays the railroad freight from the port of entry in the United States to Xenia, Ohio, and also the premium on increased value and war risk insurance as well as any variance beyond the normal cost of freight insurance, *et cetera*.

Each agent is solely the seller's agent and receives no compensation from appellant.

Upon arrival in Xenia, the fiber is placed in appellant's raw-material warehouse and there held in original packages until needed in appellant's processing operations. Such purchases are made for use in manufacture and with no intention of sale in original package.

While the bales remain in the raw-material warehouse, they are carried in a raw-material account on appellant's books; but upon their removal from such warehouse the bales are immediately charged to goods-in-process account whether the bales have been broken or not.

Less than 1/10 of 1 per cent of appellant's usual inventory is bought on spot purchases.

The sales contracts provide that equivalent delivery may be made from ship or store at seller's option; that payment is to be made in New York funds on delivery at dock of destination (port of entry); and that title is to remain in the seller until the goods are fully paid for. Notwithstanding the terms of the contract, appellant has never received spot delivery, has never paid the price of the goods [fol. 139] until after they have been delivered at Xenia, and sellers have never reserved any security interest or power of disposition of the goods by the form of the domestic bill of lading.

In its tax returns for the years 1938, 1939 and 1940, appellant omitted from its manufacturing inventory certain fibers produced in the Philippine Islands and in foreign countries, claiming that such fibers were imports and not taxable by the state of Ohio.

The Tax Commissioner made amended assessments against appellant for the years 1938, 1939 and 1940, increasing appellant's average inventory by the amounts of the imported fibers on hand during the respective years.

Upon appeal to the Board of Tax Appeals, the action of the Tax Commissioner was approved. The case is in this court following an appeal under Section 5611-2, General Code.

Mr. Thomas C. Lavery and Mr. Marcus E. McCallister,
for appellant.

Mr. Thomas J. Herbert, attorney general, and Mr. Aubrey A. Wendt, for appellee.

OPINION .

TURNER, J.:

Did the action of the Tax Commissioner violate Article I, Section 10, Clause 2 of the Constitution of the United States which forbids the levying by a state, without consent of Congress, of an impost or duty on imports? Paraphrasing the language of Mr. Chief Justice Marshall in *Brown v. Maryland*, 25 U. S. (12 Wheat.) 419, 443, 6 L. Ed. 678, 686: Did the tax here imposed intercept the import in its way to become incorporated with the general mass of property and deny it the privilege of becoming so incorporated until it shall have contributed to the revenue of the state?

The purpose of the foregoing provision of the Constitution was to prevent the seaboard states, as well as other [fol. 140] states, through which such imports were transported, from levying tribute before the imports reached their final destination and were sold or used by the importer.

Brown v. Maryland, *supra*, is the leading case on the subject. At page 441 (686 L. Ed.), Mr. Chief Justice Marshall said:

"But, while we admit that sound principles of construction ought to restrain all courts from carrying the words of the prohibition beyond the object the Constitution is intended to secure, that there must be a point of time when the prohibition ceases, and the power of the state to tax commences; * * *. It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import and has become subject to the taxing power of the state; * * *."

At page 447 (688 L. Ed.), Mr. Chief Justice Marshall said:

"Sale is the object of importation."

Without reviewing here all the later pertinent decisions of the Supreme Court of the United States, we think the

following quotation from 15 Corpus Juris Secundum, 488, Section 123, correctly states the law, to wit:

"The constitutional provision [Article I, Section 10, Clause 2 of the Constitution of the United States] does not prohibit a tax on goods after they have entered the channels of trade or have been purchased subsequent to their arrival in this country, or after they have become mixed with other property in the state."

The record here discloses that the goods in question were purchased by appellant from New York agents of the sellers under written contracts which specifically provided that the [fol. 141] sales were made f. o. b. port of entry in this country (i. e., landed) and that title was to remain in the seller until the goods were fully paid for. The final invoices were made out by sellers' agents after the arrival and weighing of the goods at port of entry. All payments were made to the sellers' agents. These agents are exclusively representatives of the sellers and receive no compensation from appellant. After the goods had been cleared through customs, the agents of the sellers made rail shipments to appellant under straight bills of lading. No sales were made to appellant c. i. f.

One of appellant's witnesses stated that during the time here in question all contracts of purchase which were made with Stein, Hall & Company, Inc., of New York were made with that concern as a principal and not as agent. The agents through whom appellant made its purchases cleared the goods through customs.

Appellant's general manager testified:

"* * * Our deal with the seller is to get that material landed to a port of entry and cleared through and then it is turned over to us."

This is an accurate description of the transactions and clearly shows that appellant is not the importer, but rather the purchaser of goods subsequent to their arrival in this country under contract to so take them.

Appellant's general manager testified that none of these goods were purchased or held with a view to sale, but solely for the purpose of conversion in the course of manufacture. That appellant's contracts gave rise to imports cannot

be questioned. But the fact remains that the purchases and deliveries were made in the United States and that while interstate commerce was involved after the goods were landed, foreign commerce or imports were not. The [fol. 142] record discloses the following evidence offered on behalf of appellant through the answers of one of the sellers' agents:

"H & A do not buy c. i. f. but *landed at port in the United States.*

"When the goods arrive at an American port the documents are handed to us by the bank for the purpose of making customhouse entry and delivery. As a matter of service to H & A, the transshipment from port of arrival to Xenia is arranged by ourselves, H & A instructing us the route by which they wish the goods forwarded and, of course, *paying the freight from port of arrival to Xenia.*

"The foreign shipper does not reserve any power of disposition over the goods *after the documents are handed to the negotiating bank at port of origin.*

"The contract calls for payment by H & A on delivery of the goods on dock at port of entry in U. S. A. These terms are in practice modified to the extent that payment is not made until the goods are weighed on the dock and invoice received by H & A." (Italics ours.)

The record discloses that another agent answered:

"We definitely act as our principal's selling representative and this is borne out by the fact that we offer and sell at the same price quoted by our principals and receive a fixed commission from them. Up to about a year ago [answer made September 17, 1941] the contract was made between Stein, Hall & Company, Inc. [seller's agent] and Hooven & Allison Company, *both as principals*, but since then [about a year prior to September 17, 1941] we have been indicating on our contract 'sold by Stein, Hall & Company, Inc. for the account of'" (Italics ours.)

The contract forms used by each of the five sellers' agents from whom appellant purchased are identical in terms, with the exception that in *one* sisal contract form submitted by [fol. 143] Stein, Hall & Company, Inc., the provision for f. o. b. or landed on dock at destination is changed to c. i. f. and the provision for title remaining in seller until goods are fully paid for is eliminated.

Under a c. i. f. purchase the buyer takes title at point of

origin and pays the cost of insurance and freight *from point of origin*. Appellant's general manager testified that all their purchases were f. o. b. port of entry, that is, a landed price, and that if appellant had to buy c. i. f. there would be no excuse for agents to stay in business.

Assuming that appellant was the importer, these goods had so come to rest as to be mingled with the mass of property in this country when the state tax was levied thereon. This tax could not have the effect of intercepting the import nor did it deny to the import the privilege of becoming incorporated in the general mass of local property unless such tax payment was made.

That *sale* is the object of importation was made clear by Mr. Chief Justice Marshall in *Brown v. Maryland*; *supra*. Appellant's general manager testified positively that none of the goods in question were bought for the purpose of resale but were purchased only for the purpose of conversion by manufacturing processes.

The Supreme Court of the United States has held that when imports are once sold by the importer their character as imports is lost.

As stated by Mr. Justice Clifford in *Waring v. Mayor of Mobile*, 75 U. S. (8 Wall.), 110, 123, 19 L. Ed., 342, 346:

"Importers selling the imported articles in the original packages are shielded from any such state tax, but the privilege of exemption is not extended to the purchaser, as the merchandise, by the sale and delivery, loses its distinctive character as an import."

Mr. Justice Clifford distinguished between a sale by the [fol. 144] importer of the imported article and the breaking up of the original package when he said:

"When the importer sells the imported articles, or otherwise mixes them with the general property of the state by breaking up the packages, the state of things changes, as was said by this court in the leading case, as the tax then finds the articles already incorporated with the mass of property by the act of the importer."

In discussing the case of *Brown v. Maryland*, *supra*, Mr. Justice Barbour said in the case of *Mayor of City of New York v. Miln*, 36 U. S. (11 Pet.), 102, 136, 9 L. Ed., 648, 661:

"The great grounds upon which the court put that case were: that sale is the object of all importation of goods:
"

In the *License Cases*, 46 U. S. (5 How.), 504, 575, 12 L. Ed., 256, 288, Mr. Chief Justice Taney said in respect of importation:

"And while they are in the hands of the importer for sale, in the form and shape in which they were introduced, and in which they are intended to be sold, they may be regarded as merely *in transitu*, and on their way to the distant cities, villages, and country for which they are destined, and where they are expected to be used and consumed, and for the supply of which they were in truth imported."

Appellant's general manager testified as above noted that none of these goods were purchased for the purpose of resale and that the only purpose of the purchases was use as raw material in appellant's manufacturing processes. When these goods arrived at Xenia, Ohio, appellant placed them in one of its raw-material warehouses where they were held until needed in the course of manufacture. When asked whether there was any definite time during which such goods were kept in the warehouse, ap- [fol. 145] pellant's general manager answered:

"No; it might be we would need the stuff as soon as it got there and again we might not; it comes from long distances and we do not carry any more inventory than we need to; it takes three to six months for it to get to us; we attempt to keep a backlog for that; we attempt to run our business with a minimum working inventory, of course."

The bookkeeping procedure followed by appellant was to charge the raw-material account with these goods when received, and credit that account and charge the goods in process account when they were taken from the warehouse. This procedure was followed for the purpose of cost accounting. Appellant included its raw-material accounts in its assets as disclosed in its balance sheet and other financial statements.

No question is raised as to the amount of the assessments, if the goods are taxable. Under our holding it will be unnecessary to determine whether the goods imported from the Philippine Islands prior to the present war should be treated as coming from a foreign country.

Being of the opinion that the decision of the Board of Tax Appeals was reasonable and lawful, such decision is hereby affirmed.

Decision affirmed.

Weygandt, C. J., Matthias, Hart and Williams, JJ., concur.

Bell, J., dissents.

Zimmerman, J., not participating.

DISSENTING OPINION

Bell, J., dissenting. The conclusions reached by the majority in this case, in my opinion, are not warranted by the facts or the law.

[fol. 146] Clause 2, Section 10, Article I of the Constitution of the United States reads as follows:

"No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: * * *"

That provision as it relates to this case is a prohibition against the state laying imposts on imports.

The fact that all of the goods here in question (with the possible exception of those coming from the Philippine Islands) are imports will admit of no dispute and so long as they remained imports the prohibition against their being subject to taxation by the state remained in full force and effect.

The question then is: Were these goods still imports at the time the state declared they were subject to tax?

The decisions are numerous upon the subject of when imported goods cease to be immune from state taxation. Generally speaking, it would seem that the immunity ceases, first, where the imports are sold after arrival in this country, and, second, where they are taken from the original package for sale or for use in a manufacturing process.

It must be conceded that the power to construe the Constitution of the United States is reposed in the federal courts, and that the state courts are bound to follow their decisions.

Probably the leading case upon the subject of *state taxation upon imports* is *Brown v. Maryland*, 25 U. S. (12

Wheat.), 419, 6 L. Ed., 678, decided in 1827. Chief Justice Marshall wrote the opinion of the court.

In that case the state of Maryland attempted to exact a license fee from persons engaged in the business of selling imports. The question presented was whether the exaction of the fee was within the prohibition contained in Clause 2, Section 10, Article I of the Constitution of the United States.

[fol. 147] In a lengthy and elaborate opinion the Chief Justice said in part:

"From the vast inequality between the different states of the confederacy, as to commercial advantage, few subjects were viewed with deeper interest, or excited more irritation, than the manner in which the several states exercised, or seemed disposed to exercise, the power of laying duties on imports. From motives which were deemed sufficient by the statesmen of that day, the general power of taxation, indispensably necessary as it was, and jealous as the states were of any encroachment on it, was so far abridged as to forbid them to touch imports or exports, with the single exception which has been noticed. Why are they restrained from imposing these duties? Plainly because, in the general opinion, the interest of all would be best promoted by placing that whole subject under the control of Congress. Whether the prohibition to 'lay imposts, or duties on imports or exports,' proceeded from an apprehension that the power might be so exercised as to disturb that equality among the states which was generally advantageous, or that harmony between them which it was desirable to preserve, or to maintain unimpaired our commercial connections with foreign nations, or to confer this source of revenue on the government of the Union, or whatever other motive might have induced the prohibition, it is plain that the object would be as completely defeated by a power to tax the article in the hands of the importer the instant it was landed as by a power to tax it while entering the port. . . ."

The tax in that case was condemned and held invalid. This case has been cited and followed for more than a hundred years.

The state of Maryland in that case was represented by Mr. Taney who argued that the license fee was lawful. He later became Chief Justice of the United States and in 1847,

[fol. 148] as Chief Justice, he wrote the opinion in the *License Cases*, 46 U. S. (5 How.), 504, 12 L. Ed., 256, in which he said in part;

"I argued the case in behalf of the state [referring to *Brown v. Maryland*], and endeavoured to maintain that the law of Maryland, which required the importer as well as other dealers to take out a license before he could sell, and for which he was to pay a certain sum to the state, was valid and constitutional; and certainly I at that time persuaded myself that I was right, and thought the decision of the court restricted the powers of the state more than a sound construction of the Constitution of the United States would warrant. But further and more mature reflection has convinced me that the rule laid down by the Supreme Court is a just and safe one, and perhaps the best that could have been adopted for preserving the right of the United States on the one hand, and of the states on the other, and preventing collision between them."

In the case of *Waring v. Mayor*, 75 U. S. (8 Wall.), 110, 122, 19 L. Ed., 342, the Supreme Court for the first time decided that where the goods had been sold after entry into this country they were no longer imports and the state could levy a tax upon the goods.

The decision in the *Waring case* has been followed ever since it was rendered.

The Tax Commissioner bottomed his decision upon the conclusion that a sale occurred after the imports arrived in this country and, upon appeal, the Board of Tax Appeals affirmed that decision.

The majority opinion of this court is bottomed upon a dual conclusion, first, that there was a sale after the goods arrived in this country, and second, that the goods were mixed with the general property in the state thereby destroying the immunity.

If there was a sale of the goods after arrival in this country [fol. 149], try that would make an end to the contention of appellant. See *Waring v. Mayor, supra*.

The proposition that courts will look through the form and to the substance of a transaction in order to determine the rights of the parties is so universally understood and accepted as to need no citation of authority.

It should also be kept in mind that, generally speaking, any statute imposing a tax should be strictly construed against the state and in favor of the taxpayer.

With these principles in mind a brief examination of the facts is necessary and important to determine, first, whether a sale took place after the imports reached this country, and, if no such sale took place, then second, whether the goods were so incorporated with the mass of property in this state as to destroy the immunity.

The undisputed evidence, together with the stipulations of counsel, disclose these salient facts: That appellant bought the goods in question through five New York sales agencies representing foreign producers; that on some occasions the offer to sell came from one of the five agents, and on other occasions the appellant would contact the agent and make an offer to purchase at a given price; that often the contracts were made before the goods were in existence; that after appellant and the agent had agreed upon a price, called a landed price, which included all ocean freight charges, insurance, etc., from the point of origin, the agent would submit the offer to the producer and get confirmation thereof; that after the confirmation was received by the agent a written contract generally would be executed between the appellant and the producer and thereafter the goods were shipped; that the contracts were executed upon uniform written forms which had been in use for many years; that the form contract provided that the title to the goods was to remain in the seller until the purchase price was paid; that this provision as to title was never enforced by the producer and was by mutual consent waived by the parties; that before the goods were shipped they were put up in bales and generally were marked so as to identify them with the contract; that the appellant determined the steamship line upon which the goods were to be shipped and determined the port of entry; that as soon as the goods left the point of origin the appellant immediately was notified and received the declaration of the ship; that appellant was responsible for the goods the minute the contract was made and the appellant had the right to re-sell the goods while upon the high seas; that the goods were shipped upon a bill of lading consigned by the producer to a bank, the bill of lading containing directions to notify appellant and the agent; that the agent

took up the bills of lading, paid the bank and then shipped the goods by rail to Xenia, Ohio; and that appellant was the importer.

The producer reserved no control over the goods after they were loaded on ship at point of origin except, as stated, that the bill of lading was issued to the order of the bank, with directions to notify appellant and the agent.

The title to the goods upon arrival in this country was either in the producer or the appellant. No one could seriously contend that the bank or the agent was at any time the owner of the goods.

The rule seems to be that where goods shipped in interstate commerce are earmarked for a purchaser and shipped under a bill of lading to the order of a bank with directions to notify purchaser, *the right of property passes to the purchaser when the particular property was designated, but the right of possession remained in the seller until the draft is paid.*

[fol. 151] In *Robinson & Martin v. Houston & T. C. Rd. Co.*, 105 Tex., 185, 146 S. W., 537, paragraph two of the syllabus states:

"Goods purchased were shipped by rail consigned to shipper's order, and draft for the price sent through the banks with bill of lading attached. Held that the purchaser had title to support an action against the carrier for delay in transportation occurring prior to his payment of the draft, though the right of possession up to such payment was in the shipper."

That case involved a boiler and on page 187, the court speaking through Brown, C. J., said:

"When the Erie City Iron Works sold the boiler to Robinson and Martin and delivered it to the railroad company at Houston, *the title rested in the purchasers*; neither payment of the price nor actual delivery to the purchaser was necessary to pass the title." (Cases cited.) See, also, *Dow v. Bank*, 91 U. S., 618, 23 L. Ed., 214; *F. L. Shaw Co. v. Coleman* (Tex. Civ. App.), 236 S. W., 178.

These are cases involving commerce between the states; however, it is difficult to discern any sound reason why the rule applied in interstate commerce cases as to an order notify bill of lading should not apply also to such bills of lading where used in foreign commerce.

The contract between the producer and appellant was the sole reason for shipping these goods into this country. This

record to me clearly demonstrates that it was the intention of the parties that title was to pass when the goods were placed on ship; that title did pass to appellant at that time; and that there was no sale of the goods after their arrival in this country.

With regard to the second conclusion of the majority, it is admitted that these goods were in the original packages at the time the exemption was claimed.

[fol. 152] In *Brown v. Maryland, supra*, it is said:

“It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; *but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution.*” (Italics ours.)

In the *License Cases, supra*, Mr. Chief Justice Taney said:

“And while they are in the hands of the importer for sale, in the form and shape in which they were introduced, and in which they are intended to be sold, they may be regarded as merely *in transitu*; and on their way to the distant cities, villages, and country for which they are destined, and where they are expected to be used and consumed, and for the supply of which they were in truth imported.”

Low v. Austin, 80 U. S. (13 Wall.), 29, 32; 20 L. Ed., 517, decided in 1871, is a leading “*original package*” case. Mr. Justice Field, in delivering the opinion of the court, said:

“The simple question presented in this case for our consideration is, whether imported merchandise, upon which the duties and charges at the custom-house have been paid, is subject to state taxation, whilst remaining in the original cases, unbroken and unsold, in the hands of the importer.

“The decision of this court in the case of *Brown v. The State of Maryland* furnishes the answer to the question.

“The Supreme Court of California appears, from its opinion, to have considered the present case as excepted

[fol. 153] from the rule laid down in *Brown v. The State of Maryland*, because the tax levied is not directly upon imports as such, and consequently the goods imported are not subjected to any burden as a class, but only are included as a part of the whole property of its citizens which is subjected equally to an *ad valorem* tax. But the obvious answer to this position is found in the fact, which is, in substance, expressed in the citations made from the opinions of Marshall and Taney [*License Cases*, 46 U. S. (5 How.), 504, 575, 12 L. Ed. 256 (1847)], that the goods imported do not lose their character as imports, and become incorporated into the mass of property of the state, until they have passed from the control of the importer or been broken up by him from their original cases. *Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition.* The question is not as to the extent of the tax, or its equality with respect to taxes on other property, but as to the power of the state to levy any tax. If, at any point of time between the arrival of the goods in port and their breakage from the original cases, or sale by the importer, they become subject to state taxation, the extent and the character of the tax are mere matters of legislative discretion." (Emphasis added.)

This decision has never been questioned but has been approved and followed upon many occasions and is still the law of the land.

The second part of the conclusion of the majority, as set forth in paragraph two of the syllabus, is to my mind contrary to the decisions of the United States Supreme Court upon this subject.

The last question is whether the manila hemp from the Philippine Islands is entitled to protection as an import.

The cases of *Woodruff v. Parham*, 75 U. S. (8 Wall.), 123, 19 L. Ed., 382; *Pittsburgh & Southern Coal Co. v. Louisiana*, 156 U. S., 590, 600, 39 L. Ed., 544, 15 S. Ct., 459; and *Patapsco Guano Co. v. Board of Agriculture*, 171 U. S., 345, 350, 43 L. Ed., 191, 18 S. Ct., 862, are authority for the proposition that an article cannot be an import unless it has been brought into this country from a country foreign to the United States.

Was the Philippine Islands during the years 1938, 1939 and 1940 a foreign country?

In *Cincinnati Soap Co. v. United States*, 301 U. S., 308, 81 L. Ed., 1122, 57 S. Ct. 764, in discussing the Philippine Independence Act, the court said:

“ . . . Undoubtedly, these acts have brought about a profound change in the status of the islands and in their relations to the United States; but the sovereignty of the United States has not been, and, for a long time, may not be, finally withdrawn. So far as the United States is concerned, the Philippine Islands are not yet foreign territory.

See, also, the case of *Fourteen Diamond Rings v. United States*, 183 U. S., 176, 46 L. Ed., 138, 22 S. Ct. 59.

The decisions in those cases persuade me that the manila hemp from the Philippine Islands was not protected as an import.

In my opinion, therefore, the decision of the Board of Tax Appeals should be reversed and the cause remanded with instructions to allow the exemptions claimed upon the goods here in question except the manila hemp from the Philippine Islands.

[fol. 156] [File endorsement omitted]

[fol. 157] IN THE SUPREME COURT OF OHIO

[Title omitted]

APPLICATION FOR REHEARING—Filed December 7, 1943

Now comes appellant, by its counsel, and makes this application for rehearing of the above-entitled cause, in which this Court affirmed the judgment of the Board of Tax Appeals, Department of Taxation of Ohio; and rendered judgment against this appellant and in favor of the appellee herein, and respectfully asks that a rehearing be granted for the following reasons:

I -

The conclusion of the Court, contained in the first paragraph of the syllabus, to-wit,

“Where an Ohio corporation contracts to purchase fibers grown in a foreign country at a landed price at

port of entry in this country, with title to remain in the seller until goods are paid for, and such fibers are transshipped by seller's agent from port of entry to purchaser in Ohio, such Ohio corporation is not an importer."

is squarely in conflict with the undisputed evidence contained in the record in this cause and is, therefore, erroneous as a matter of law.

The evidence shows that the terms of the written contracts upon which the Court based its opinion were not [fol. 158] adhered to and that by the actual course of business title to the fibers purchased in foreign countries passed to appellant before said fibers arrived in this country. It is the duty of this Court to look through the form of the transactions to their substance in order to determine appellant's right to immunity from taxation of said fibers by the state of Ohio, under Article I, Section 10, Clause 2, of the Constitution of the United States. *Bowman v. Tax Commission of Ohio*, 135 Oh. St. 295, 300, 20 N. E. (2d) 916 (1939), where Judge Hart said:

"The fact that a contract is in written form will not preclude inquiry into the nature of the transaction covered by the instrument. *Speyer & Co. v. Baker*, 59 Ohio St. 11, 25, 51 N. E. 442."

The validity of the ultimate finding of this Court is to be tested by what in fact was done rather than by the mere form of words used in the writings employed, *Helvering v. Tex-Penn Oil Company*, 300 U. S. 481, 493, 57 S. Ct. 569, 81 L. Ed. 755 (1937); *United States v. Phellis*, 257 U. S. 156, 168, 42 S. Ct. 63, 66 L. Ed. 180 (1921). See also 32 C. J. Secundum, Sec. 861, p. 791, 795, citing many cases; 37 Federal Digest, Sec. 236, p. 222, and cases cited.

II

The confusion of the Court, contained in the second paragraph of the syllabus, to-wit,

"The state has the power to levy a general property tax on imported goods so long as such tax does not intercept the import in its way to become incorporated with the general mass of property or deny to the im-

port the privilege of becoming so incorporated until it shall have contributed to the revenue of the state,"

is squarely in conflict with the undisputed evidence contained in the record in this cause that the goods were in the original package in appellant's hands, as importer, at the [fol. 159] time the tax thereon was laid and were, therefore, within the rule laid down by the Supreme Court of the United States in *Low v. Austin*, 13 Wallace 29, 32, 20 L. Ed. 517, (1871):

"Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition."

The second paragraph of the syllabus is, therefore, erroneous as a matter of law.

Thomas C. Lavery, Marcus E. McCallister, Attorneys for Appellant.

[fol. 160] [File endorsement omitted]

[fol. 161] IN THE SUPREME COURT OF OHIO

[Title omitted]

PREACIPE FOR TRANSCRIPT OF RECORD—Filed January 22, 1944

TO THE CLERK:

You are hereby directed to cause to be made and delivered to the undersigned a certified copy of the entire record, including the docket and journal entries, the opinion of the court, the application for rehearing, the order denying such application, and this praecipe, in the above entitled cause, with the exception of the following:

Form 947-B, preliminary assessment certificate attached to Form 945, Tax Return for the Year 1938 (duplicate of form attached to notice of appeal to Board of Tax Appeals).

Form 945-C-7, Form 945-C-8, Form 945-F-2, Form 945-K, Form 945-M and Form 945-M carbon duplicate, Tax Return for the Year 1938.

Form 947-B, preliminary assessment certificate attached to Form 945, Tax Return for the year 1939 (duplicate of form attached to notice of appeal to Board of Tax Appeals).

Two yellow work sheets dated June 26, 1941, attached to Form 945, Tax Return for the Year 1939.

Form 945-C-7, Form 945-C-8, Form 945-F-2, Form 945-M and Form 945-K, part of general Form 945, Tax Return for the year 1939.

[fol. 162] Form 947-B, preliminary assessment certificate (duplicate of form attached to notice of appeal to Board of Tax Appeals), and Form 905-S (blue), preliminary assessment certificate attached to Form 945, Tax Return for the year 1940.

Three yellow work sheets dated June 26, 1941 attached to Form 945, Tax Return for the year 1940.

Form 945-C-6, listing Hamilton County, Ohio, property, Form 945-C-8, Form 945-F-2, Form 945-K and Form 945-M, Tax Return for the Year 1940.

Order of Tax Commissioner re taxpayer's application for review and redetermination (duplicate attached to notice of appeal to Board of Tax Appeals).

Letters dated March 19, 1942, to interested parties and counsel transmitting opinion and entry of Board of Tax Appeals.

Thomas C. Lavery, Marcus E. McCallister, Attorneys for Appellant.

[fol. 163] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 164] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 10, 1944

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

